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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904~~. 1905.

No. ~~324~~. 65.

THE SUCCESSION OF JUAN SERRALLES, BY THEIR ATTORNEY-IN-FACT, EDUARDO WELLENKAMP, APPELLANTS,

vs.

BELEN ESBRI, WIDOW OF CARTAGENA.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED JULY 25, 1904.

(19,424)

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1 *Copy of the Division of the Estate of the Late Jose Nicolas de Cartagena and Inventory of the Share Allowed Belen Esbri.*

Division of the estate.—In the city of Ponce, the 20th of March, 1899, for the purpose of proceeding to the division of the estate left by the late Nicolas de Cartagena y Mangual, we have assembled—the widow Belen Esbri y Roubert, 39 years of age, occupation, that befitting her sex, and domiciled in this city;—Jose Nicolas Cartagena y Perez, single, clerk in a store, 24 years of age, and domiciled in this city;—R. Ulpiano Colom y Ferrer, married, property holder, 38 years of age, and domiciled in this city, in his capacity as guardian of the minors Genaro, Mercedes, and Rafael Cartagena y Perez, to which office he was designated by a family council under date of March 20th, 1898, as shown by the entry made in the "Registry of guardianship" in the court of first instance of this city, under date of December 23rd last, number 115, folio 128, first entry.—And to that purpose, and to make clear, and justify in the proper manner the division of the property, the following inventory is made of the share belonging to Belen Esbri Roubert:

2 Share belonging to Belen Esbri y Roubert, her share in usufruct. $1365.00

And for its payment the following real and personal properties are adjudicated to her in usufruct, the title to said property being in favor of the four children, heirs of Nicolas Cartagena, namely: Jose Nicolas, Genaro Mercedes and Rafael Cartagena y Perez, until the death of the holder of the usufruct, whereupon the children will have the full dominion of the said property, viz:—

1. The remainder of the value of the furniture included in the inventory under No. 2.....	$200.00
A share aggregating 1165 pesos in the mortgage included in the inventory under No. 3, and payable as follows: 1031 pesos 66⅔ cents of the instalment due July 15th, 1902.....	1031.66⅔
2. And the sum of 133 pesos 33⅓ cents of the instalment due July 15th, 1903.....	133.33⅓
	$1365.00

3 Ponce, March 22nd, 1899.—The family council for the minors Cartagena y Perez, having been duly convened, the members, Eduardo Wellenkamp, Tomas Mosanto, Juan Jose Cartagena, Francisco Cartagena and Justo R. Rivera, were assembled. The president, Eduardo Wellenkamp, began by reporting the inventory,

appraisement, liquidation, division, and adjudication of the estate left by Nicolas Cartagena y Mangual; which acts were put in writing in thirteen sheets of paper, and are signed by the widow Belen Esbri, the guardian Colom, and the heir, (of age) Nicolas Cartagena y Perez. And the work of preparing the inventory, appraisement, liquidation, division and adjudication having been examined by the members of the council, and found executed with justice and equity, they unanimously agreed to approve the same, recording the instrument in the protocol of the notarial office elected by the guardian, who should be furnished with a copy of these proceedings, and of those of the 15th of February last. And there being nothing else to consider, the session was ended, and the proceedings signed.

E. WELLENKAMP.
TOMAS MONSANTO.
F. CARTAGENA.
JUSTO R. RIVERA.
JUAN J. CARTAGENA.

4 This agrees exactly with the original records of the proceedings to which I refer.

In witness thereof, and to deliver the same to the guardian R. Ulpiano Colom y Ferrer, I issue these presents in the city of Ponce, this 24th day of March, 1899.

(Signed) E. WELLENKAMP.

The preceding copy agrees with the instrument that has been exhibited to me, and which I return, making an entry of the presents in the register of entries of this notarial office, under No. 6. And to deliver the same to Belen Esbri y Roubert, I issue these presents in the city of Ponce, the 16th day of April, 1901.

(Signed) RAFAEL TORO VENDRELL.

(There is a notary's seal.)

5 To the district court:

Libertad Torres Grau, attorney, in the name and as the legal representative of Belen Esbri y Rubert, widow of Nicolas Cartagena y Mangual, a resident of this city, appears and states:

1. That the aforesaid Nicolas Cartagena y Mangual executed his last will and testament on the 5th day of October, 1895, before the notary, Rafael de Leon of this city, and having proceeded to make an inventory, appraisement, liquidation, division, and adjudication of the property of the estate, said proceedings were approved by the family council of the minor heirs as per instrument executed on the 22nd of March, 1899, and registered on the 28th of the same month, in the office of the aforesaid notary, under the number 177 before notary Rosendo Matienzo Cintron, also of this city, who was entrusted with such office, as a substitute of the former.

2. That in said proceedings for the distribution of the properties, among other properties of the estate there appears, under
6 number 3 of the inventory, a sum of twelve thousand one hundred and thirty three pesos, thirty three and one third cents; which by virtue of the sale made by said Mr. Nicolas Cartagena, to Juan Serralles y Colon, as per deed executed before notary Joaquin Mayoral on the 6th of October, 1894, of an interest of 18%, which the former had in the sugar estate known as "Ursula", situated in the barrio of "Cintron" of the municipal district of Juana Diaz, which was due by said Serralles y Colon, and who agreed to pay such sum and an annual interest of 10%, payable quarterly in the following manner: two thousand pesos, each 15th day of July of the years 1898, 1899, and 1900; three thousand pesos, the same day of each of the following years 1901 and 1902; one hundred and thirty three pesos and thirty three and one third cents the same day of the year 1903, in the meantime the property remaining mortgaged as security.

3. In the proceeding for the distribution of the property hereinbefore mentioned, the widow, my client, Belen Esbri y Rubert, was awarded as a part of her share of the usufruct, the following:

"And an interest of one thousand one hundred and sixty five pesos in the mortgage credit registered in the inventory under num-
7 ber 3, and in the following instalments: one thousand thirty one pesos, sixty six and two thirds cents of the instalment due on the 15th of July, 1902; and one hundred thirty three pesos, thirty-three and one third cents, amount of the instalment, which is to be due on the 15th of July nineteen hundred and three. Both sums make a total of one thousand one hundred and sixty-five pesos. All of which appears from the testimony as per attached Exhibit Number 1.

Among the clauses of the deed of sale, to which reference is made in the statement number 2, there is the following: "Second. Said sale is made for the sum of eighteen thousand pesos, commercial money, which will be paid by the buyer Juan Serralles y Colon, who is obligated by the party appearing, Eduardo Wellenkamp, to make said payment, and same shall be received by Jose Nicolas de Cartagena, in the following instalments: two thousand pesos, on the 15th of July 1898; the further sum of two thousand pesos on the same day and month of 1899; and an equal sum of two thousand pesos, on the 15th day of July, 1900, and three thousand pesos, each 15th day of July of the years 1901 to 1904, inclusive, all in current commercial money of whatever coinage in circulation, or which
8 may be accepted in this province at the rate of one hundred cents of the current money for each peso, and exclusive of all paper money in existence or which may be created, even though its circulation be compulsory. (Document number 2.)

5. A quarterly income (rentas), which Juan Serralles y Colon or his heirs, had to pay to my client for the share of the property awarded to her, having fallen due on the 15th of September of last

year, 1900, the representative of said heirs, Mr. Eduardo Wellenkamp y Chelva, was requested the payment of such quarterly income, which he refused to pay in the money in circulation in this island, offering to make payment of its equivalent in provincial money already out of circulation, for which reason my client was obliged to bring an action against him before the municipal court of this city, which finally rendered a judgment condemning the defendant heirs, to pay the quarterly income (rentas) claimed, in the American money in circulation at present, and costs.

6. Mr Wellenkamp y Chelva, as representative of the debtor heirs, having taken an appeal for the annulment of said judgment, your court rendered an executory judgment, the legal grounds and mandatory provisions of which read as follows:

(1.) Whereas, in matters of contracts, the will of the contracting parties is the supreme law, to which the courts of justice must subordinate their decisions, provided the clauses of the contract are legal, and are not opposed to law or public order;

(2.) Concluding that, the terms of the clause certified to in the record, are clear and definite, and it being stipulated therein, by mutual agreement of the contracting parties, that the payment of the instalments agreed upon as the consideration of the sale, shall be made in the money current in commerce of whatever coinage, which may circulate as such, or be accepted in this island, at the rate of one hundred cents of the money in circulation for each peso, to the exclusion of all paper money created or to be created, even though of compulsory circulation, it is evident that the payment of each and every one of the instalments must be made in the kind of money, which may circulate in this island of whatever coinage, at the time in which said instalments become due, or may be legally accepted at the rate of one hundred cents for each peso, without regard to the increase or decrease of the money, inasmuch as the contracting parties bound themselves to do this, the intrinsic value of the money in which the stipulated payment was to be made, having been agreed upon beforehand.

(3.) Whereas:—This being the case, the principle established in article 1170 of the Civil Code, according to which the payment of debts should be made in the stipulated currency, and it being impossible to deliver the currency in silver or gold coin in legal circulation in Spain, must be applied to the question at issue.

(4.) Whereas the principal debt draws interest, the same legal principle prevails for the payment of such interest as for the payment of the principal, and it is not necessary to take into consideration the provisions of the judicial order of February 25th, 1899, for the reason that they have no retroactive effect, and because the present case does not involve a loan or debts contracted in provincial money, nor does the question turn upon a promise solicited by the debtor.

(5.) Whereas, for the reasons stated, it is proper to sustain the action entered, imposing the costs upon the defendant; in view of

the article cited, and other legal provisions, *we adjudge* that,
11 declaring the action brought, as properly instituted, we ought to confirm and do confirm the judgment appealed from, imposing the costs of both proceedings upon the appellant, and, with a certified copy of this our judgment, we hereby direct that the original records be returned within two days, to the place of their origin, for the proper execution of the judgment.

(7.) The defendant was duly notified of the foregoing superior sentence, and was later required to make payment. As it was his duty, he finally paid the quarterly instalment claimed from him, in American money, which is the commercial circulating medium on the island at present.

(8.) Two more quarterly instalments being now due, that is, those corresponding to the 15th of December of last year, and the 15th of March of the current year, Mr. Wellenkamp y Chelva was requested to pay the same, as the legal representative of the heirs of Serralles y Colon, and he has absolutely refused to comply with said request, claiming that the interest due, as well as that to become due, and the principal, should be paid by him in provincial money, and not in the commercial circulating medium, at the rate of one hundred cents to each "peso" of the same money, notwithstanding the
12 agreement made by the contracting parties, and the decision rendered by your court of justice in your final sentence, to which I have referred, he having paid no attention to remonstrances or friendly negotiations.

(9.) My client has vainly tried conciliation, as appears from the certificate marked number 3.

In view of the foregoing facts, I bring this action, based upon the following:

Legal Considerations.

1. All civil litigations between parties, when the amount exceeds $400.00 U. S. currency, shall be originally heard and decided before the respective district court. (Paragraph 47 of general order number 118, issued August 15th, 1899.)

The above legal provision is applicable to the case, because the object is to have a right declared to collect and receive in said money, in interest and capital, a greater sum than that which the provision itself specifies.

13 (2.) In personal actions, the competent judge shall be that of the place where the obligation is to be performed. (Rule first, article 62 of the Law of Civil Procedure.)

(3.) Obligations arising from contracts, have legal force between the contracting parties and must be fulfilled in accordance with the tenor of the same. (Section 1091 of the Civil Code.)

4. The contracting parties may make agreements and establish the causes and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order. (Section 1255 of the Civil Code.)

5. Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences, which, according to their character, are in accordance with good faith, usage, and law. (Section 1258 of the Civil Code.)

6. If the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its stipulations shall be observed. (Section 1581 Civil Code.)

14 7. If the person obligated to do a certain thing, should not do it, it shall be ordered to be done at his expense. This shall also be done, should he act in contravention to the terms of the obligation. (Section 1098 of the Civil Code.)

8. Persons obligated to deliver or to do something, are in default the moment the creditor demands the fulfillment of this obligation, judicially or extra judicially, and it shall not be necessary, in order that default may exist, that a demand should be made of the creditor when the obligation so declares it expressly. (Section 1100 of the Civil Code.)

9. Those, who in fulfilling their obligations, are guilty of fraud, negligence or delay, and those, who in any manner whatsoever act in contravention of the tenor of the same, shall be subject to indemnify for the losses and damages caused thereby. (Section 1101 of the Civil Code.)

10. The cost shall always be imposed upon the litigant, who loses his case in all points. (Paragraph 63 of general orders number 118, of August 15th, 1899.)

15 Prosecuting, therefore, the personal action arising from the contract of sale, to which the facts of this complaint refer, I beg the court that, considering the same and the documents attached, as presented, and myself as a party to the proceedings, in the name of Belen Esbri y Roubert, widow of Cartagena, the demand be admitted as a declaratory action of greater amount; to direct that the heirs of Juan Serralles y Colon, represented by Eduardo Wellenkamp y Chelva, be duly notified, in order that he may, within a period of ten days, which may be extended, enter an appearance in the proceedings and make his answer, and also that the copies attached, be delivered to him.

I also beg the court to declare that by virtue of the express stipulation of the second clause, contained in the deed of sale, executed on the 6th of October, 1894, between Juan Serralles y Colon, and Nicolas Cartagena y Mangual, said heirs are obligated to pay to Belen Esbri y Roubert, widow of the latter, the revenue (rentas) due her up to this date, and, at the proper time, such revenue as
16 may become due, in American gold, which is the commercial money in circulation in this island, at present. Also that her share of the instalments stipulated in the aforesaid deed, which will become due in the years 1902 and 1903, and which share was awarded to her at the time of making the distribution of the property, left by her said husband, shall be paid in commercial current

money, of whatever coinage in circulation as such, or which may be accepted in this island at the rate of one hundred cents of the circulating money for each "peso"; the legal interest of the instalments already due and unpaid, and all the costs of the proceedings.

And furthermore, although the undersigned party does not believe the taking of the evidence necessary, I beg the court to order the taking of the evidence in this complaint, in the event that the defendant should solicit it, or attack the documents presented.

Ponce, April 17th, 1901.

RAFAEL TORO VENDRELL,
Per My Colleague.

17 To the district court of Ponce:

I, Julio M. Padilla, lawyer practicing my profession, in representation of Eduardo Wellenkamp y Chelva, respectfully put in an appearance in the declaratory proceedings, instituted by Belen Esbri y Roubert, against the heirs of Juan Serralles y Colon, to compel them to pay interest and instalments according to clause 2 of a deed of sale, executed the 6th of October, 1894, between Jaun Serralles and Nicolas Cartagena y Mangual, and answer to the action:

I answer to the complaint on its merits, by the following statements of facts and legal grounds:—

18 *Facts.*

First. Admits the nine statements of fact contained in the bill of complaint, with the following amendments: That the judgment of second instance, to which number 6 refers, was rendered by a majority and not by unanimous vote, one of the judges having voted in favor of Wellenkamp's rights; that the second "conclusion of law" of such judgment, substitutes the word "province," used by the contracting parties in the disputed clause, for the word "island," when interpreting said clause; that the heirs of Juan Serralles have never refused to pay in the equivalent money, and that the deed drawn on the 6th of October, 1894, is not the original of the contract, as it was executed for the purpose of ratifying that of September 1st, of the same year.

Second. In both deeds, the disputed clause reads as follows: "All (the payments) in current money of the commerce, of whatever coinage, which may be in circulation or be accepted *in this province*, at the rate of one hundred (centavos) cents of the circulating money for each peso, and to the exclusion, etc."

Third. On the sixth of October, 1894, when the second contract, containing the aforesaid clause, was executed, the Mexican
19 money was in circulation in Porto Rico, the retiring and exchange of which currency had already been officially announced. In fact, the appropriation law of August 6th, 1893, for the fiscal year 1893–1894, authorized the substitution of the Mexi-

can silver, by silver of the Peninsula. (Gazette of Madrid, 3rd quarter, 1893, page 473.)

The royal decree of the 17th of August, 1895, created a note of exchange for the purpose of the retirement and substitution of the said currency; another decree of the same date authorized, without public competition, the awarding of the contracts or services required by such measures; the royal orders of the same date, and those of September 11th, October 28th, and November 28th, made several provisions for the purpose of preparing and facilitating the operation of the retiring and exchange; and the royal decree of the 6th of December, declared the demonetization of the Mexican "peso," and created in substitution thereof, the special "peso" of Spanish coinage. The general government of Porto Rico retired, from circulation, the Spanish money on the 20th of March, 1896,
20 and the exchange of the Mexican coin was also made in the same year.

Fourth. The heirs of Serralles paid in provincial money, without discount, up to the 15th of July, 1900, the revenue (rentas) due Belen Esbri, in Mexican money.

Fifth. This island was a *Spanish province* until the 11th day of April, 1899, on which date it was ceded to the American Government, which has formed of it a different political body, known as "the people of Porto Rico," according to an act of Congress, approved on April 12th, 1900.

Sixth. The special coin was finally withdrawn from circulation on the 31st of July, 1900, through exchange for the American currency, at the rate of sixty cents of the latter, for each one hundred cents of the former.

Seventh. Clauses number 3 and 8 of the deed, executed on the sixth of October, 1894, and clauses number 7 and 8 of the deed, executed on the 1st of September of the same year, specify the just value of the property and its appraisement in case a public sale should be held, at the sum of eighteen thousand "pesos," of the money in circulation at that time.

21 *Points of Law.*

1. Number 1, contained in the bill of complaint, is recited herein,—

2. Number 2, contained in said bill, is also recited.—

3. Article 1091 of the Civil Code, invoked by the adverse party, is here recited by me, giving to said article its true meaning, as follows:

The tenor of the contract comprises both its letter and spirit—

(A.) As regards the letter of the contract, which is the subject matter of this suit, it is conclusively against the plaintiff's demand, inasmuch as the clause, which constitutes his strongest argument, reads that "The heirs of Serralles must pay at the rate of one hun-

dred cents of the money in circulation in this province, for each peso (Mexican)," and, therefore, we have, 1st. That the phrase "circulating money" does not determine the *species*. It is known that in forensic parlance, just as genus is what the philosophers call species, so species is what the philosophers call individual; therefore "circulating money" is the philosophical but not the legal genus;

22 The money is philosophically divided into classes or species, whether of gold, silver, nickel, copper, etc., and, within each of them, is embraced the individuals or species of the legal nomenclature, which consists at present of the gold pieces of twenty, ten and five dollars; the silver pieces of one dollar, half a dollar, one quarter of a dollar, and ten hundredth- of a dollar; the nickel pieces of one twentieth of a dollar, and the copper pieces of one hundredth of a dollar. In the absence, therefore, of an express declaration in the contract, regarding the species, the contract would be carried out in the same manner by the debtor, (complying with the letter) if, for each Mexican peso, he should pay the one-hundredth part of a twenty dollar piece, as if he paid an equal proportion of a piece of one-hundredth of a dollar, following in this way the entire scale formed by the juridic individuals or species hereinbefore enumerated. It is, therefore, necessary to search in another place, different from the letter of the contract, for the effectiveness of the same. 2nd. According to the letter also, the money in which the debtor has to pay, must be that in circulation in the

23 *province*. Province is a political division of the national territory, and must not be confounded with *island*, which is a natural division. Hence it is probably inferred that, in order to determine the obligation, attention must be paid to the money in circulation in Porto Rico until the date on which the island ceased to be a province, that is, to the special silver money of Spanish coinage of 1895; but as such coin does not exist any longer, the equivalent value must be paid in the coin by which it has been substituted; to act otherwise (always within the letter of the contract), would be to carry the effects of said contract, at the will of the creditor, to foreign ground, granting him the power, to collect for each Mexican "peso," one hundred cents of English, French or other money.

(B.) If, therefore, the contract is not clear and precise, according to its literal tenor, let us examine its mental tenor, that is, the intention of the contracting parties. To be able to judge thereof, particular attention must be paid to their actions at the time of, or subsequently to the making of the contract. (Section 1282 of the Civil Code, and judgment rendered by the Spanish supreme court, on the 24th of November, 1887, among others.)

24 However general the terms of the contract may be, there should not be understood as included therein, things and cases different from those, with regard to which the persons interested, intended to contract. (Section 1293 of the Code already mentioned.) As acts coetaneous with the execution of the contract, we have:—1st,

The fixing of the just and true value of the article object of the contract, at the sum of eighteen thousand "pesos," Mexican current money, from which it is inferred, in good faith, that it was not the intention of the parties, to increase the value 40 % and make it almost double. 2nd. The appraisement at an equal sum of an equal money in case of a public sale, in which case, the property would be offered at auction, for the sum of ten thousand eight hundred dollars, and not for eighteen thousand dollars, as is evident, and if a bidder should offer the said amount, he would be awarded the property. In such case, the purchaser's obligation would be considered as extinguished, and he would be reimbursed not only the instalments paid by him, prior to the institution of the judicial proceedings, but also the equivalent value of the difference in the currency, and this being the law it shows the vendor's in-
25 tention to be satisfied with the receipt of $10,800, as the price of the property, even if he had to go through the delays and vexations of a judicial proceeding. 3rd. The knowledge, which Juan Serralles and Nicolas Cartagena had, upon entering into the contract, of the law then in force, authorising the exchange of the Mexican money for the special medium of Spanish coinage. This action shows the vendor's intention to be on guard against the damage, which such exchange might occasion him, and the purchaser's intention of taking upon his shoulders such damage; consequently, clause No. 2 was inserted only and exclusively, on account of the exchange referred to. 4th. The fact that the 15th of July, 1903, was the date set, on which the last instalment of the obligation contracted on the 6th of October, 1894, was to become due, within which period of time, it was not rationally possible to foresee another exchange, than the one which had already been announced, and was being expected at the time of making the contract, which exchange took place two years later in 1896. As facts subsequent to the execution of the contract, we have the payments made in provincial money, without discount respecting the Mexican medium, the pur-
26 chaser having, therefore, complied with the agreement and the intention of the parties to the contract, at the time it was entered into. Clause number 2 had once its desired effect and cannot be revived for a second action.

4. Point of law number 4, invoked by the plaintiff, is recited herein, and the following statements go to show that if clause number 2 in question, were construed as claimed by the plaintiff, it would be contrary to the laws, morality, and public order.

(A.) *As to the laws.* The disputed clause was inserted that it might produce its effect in the Spanish province of Porto Rico, according to its context and date, not for "the people of Porto Rico;" for, when the change of nationality took place in this island, which the contracting parties could not foresee, not only the political rights, but also the civil rights of the native inhabitants, have been altered, the former and the latter remaining subject to the decision of Congress, (paragraph 2 of article IX of the treaty of Paris, between the

United States and Spain.) Now then, section XI of the act of Congress, approved April 12th, 1900, reads as follows: "From and after three months after the date when this act shall take effect, no
27 coins shall be a legal tender in payment of debts, thereafter contracted for any amount, in Porto Rico, except those of the United States: * * * Provided, however, that all debts owing on the date that this act shall take effect, shall be payable in the coins of Porto Rico now in circulation or in the coins of the United States *at the rate of exchange* above named." And section 8 of the Foraker law reads: "that the laws and ordinances of Porto Rico now in force, shall continue in full force and effect, except as altered, amended or modified hereinafter."

The judicial order of February 25th, 1899, had already provided that loans and debts contracted in provincial money, if paid in American coin, should be paid, making the discount specified by the order, issued by the honorable president of the Republic, on the 20th of January.

(B.) As regards morality. This is more extensive than the law, the latter being embraced in the former, which is not departed from, except in certain special cases, which are clearly and specifically expressed, for instance, in the free computation of interest. Beyond these rare exceptions, morality prevails as the only medium fit to govern the actions of the rational being. It is thus proclaimed
28 by the Civil Code as a general rule in matters of contract, in the article which we are commenting upon. Because, what can be more opposed to morality, than that an administrative disposition, such as the exchange of coin, enrich one citizen and reduce another to poverty, both being subject to the same obligation?

For, in the present case, while the heirs of Cartagena have a profit of 40%, (in addition to the 5% already gained by them, through the first exchange, and the interest which they receive), the heirs of Serralles lose not only the said 40%, which they pay in excess for the article bought, but also sustain a further loss of 40% on the selling price of the property if it were resold; that is to say, that what, in proportion had cost them one hundred, would only represent to them, twenty; strange harmony of law and morality.

(C.) As regards public order. Public order imperatively requires that government measures of a general character, have the same effect upon every citizen, and a discount of 40% having been imposed by competent authority, upon the capital of all the inhabitants of Porto Rico, it is against public order to refuse to abide by the damage, which such disposition might occasion, if the dis-
29 count referred to, can be considered as a damage.

And we make this express statement because the American coins, owing to their intrinsic value, as well as to their valuation in the exchange, have a greater value than the former provincial money. This additional value was taken into consideration by the government, in making the exchange, establishing the rate which it con-

sidered to be just, and a private individual cannot, without menace to public order, place the same valuation upon his provincial money as upon the American money of another person, thereby assuming attributes properly pertaining to the highest authority of the social community.

5. Number 5 of the plaintiff is recited herein by me, and inasmuch as we have already examined the contract in its express agreement and its relation to the law, we shall simply state herein a few words concerning the consequence which, according to the nature of the contract, are in conformity with good faith and usage. The nature of the contract has been well defined; it is a contract of sale.

In conformity with good faith, it follows, as a consequence of such contract, that neither the seller should be defrauded in the consideration, nor the purchaser in the subject matter of the sale, that is to say, that there should be a just proportion between the values
30 of the one and the other. As the exact price was fixed in the sum of 18000 pesos in Mexican money, the just proportion to-day would be at the rate of 95 provincial cents for each 100 Mexican cents, and 57 American cents for each 95 provincial cents. But the comparative valuation first mentioned, between Mexican and provincial money, should be disregarded in order that the disputed 2nd clause may produce its full effect, and the equivalent value, to which the contracting parties should, in good faith, submit themselves, remains therefore unaffected, inasmuch as it was their intention to exclude the first clause without including the other.

In regard to usage, two distinct tendencies may be observed with respect to the exchange of money. The vast majority of the inhabitants of Porto Rico, accepts the rate of exchange fixed by the government, for all transactions; while another portion of the population carries on its business operations, principally in contracts for personal services, by establishing the rate of from 75 to 80 cents of the dollar for each 100 cents of provincial money.

Nobody that we know of, but Belen Esbri, demands to be paid one dollar for one "peso." To obtain such a thing, would mean to have found a treasure in land belonging to another, and not
31 to divide the same with the owner of the land. It would mean the winning of the grand prize in a country, where lottery is prohibited.

The lawyer, who has the honor to address the court, carries on at present another law-suit, that of Messrs. D. and C. against F. M. y L., in which, as representative of the former, and with a clause in his client's favor, nearly, if not entirely identical with the one disputed herein, he has not dared to claim their money in any way, except in its equivalent value. We do not all live upon illusions.

6. Number 6 of the plaintiff is herein recited, and the statement made by me with reference to the contracting parties' intentions

and literal meaning of the clauses, are hereby authorized and ratified.

7. Section 1098 of the Civil Code, refers to obligations *to do a thing*, as distinguished from obligations to pay in a specified kind of money, which is the issue pertinent to the case.

8. The legal force and effectiveness of section 1100 of the Civil Code are hereby acknowledged, but the case, to which the provisions of said section could be applied, has already been stated by me, said case being that of the refusal, on the part of the heirs of Serralles, to pay the equivalent value.

32 9. The legal force and effectiveness of section 1101 are also acknowledged, but the provisions of said section cannot be applied to my client, inasmuch as they have neither violated the tenor of the obligations, nor are guilty of delay, negligence, or deceit, but are trying merely not to pay *in dollars*.

10. The cost must be imposed upon the plaintiff in accordance with the provisions of the aforesaid rule 63 of the general order 118, of the 15th of August, 1899, and which has been cited by the plaintiff.

11. This number is added herein, in order to cite a text, which the adverse party has overlooked, and which is pertinent to the case. Section 1285 of the Civil Code has existed of old in the legal rule: "*Incivile est non nisi tota lege perspecta, una tantum particula proposita, judicare vel respondere.*" which has been translated by the aforesaid precept.

If due relation is, therefore, established between the second clause of the contract and clause- 3 and 8, it will be observed that clause 2 cannot be given the latitude claimed by the adverse party, as has been stated in facts 3 and 5.

33 The undersigned, therefore, requests the honorable court, that he be considered as having, in due time and proper form, entered an appearance in the action, in the name of Eduardo Wellenkamp y Chelva, by filing this writing and a copy of the same; that the exceptions, as regards the lack of personality on the part of the plaintiff's representative and of the defendant, be considered as having been taken; that the bill of complaint be considered as having been answered, and that the court will please declare that the said exceptions are sustained in this case, and render a judgment for the defendant, ordering the plaintiff to abstain from further action, and imposing all the costs upon him.

The undersigned furthermore prays that evidence be taken as regards the exceptions and the bill of complaint.

Ponce, May 16th, 1901.

(Signed) JULIO M. PADILLA.

34 *Deed of Purchase and Mortgage.*

Number 449.—In the city of Ponce, island of Porto Rico, the first day of September 1894, before me Joaquin Mayoral, notary of the notaries' association of this province, residing in this city with an office in the same, in charge of the protocol of Rafael Leon during his leave of absence, appears:—Jose Nicolas de Cartagena y Mangual, married, a farmer, forty-nine years of age, and a resident of Juana Diaz, and Eduardo Wellenkamp y Chelva, a widower, property holder, fifty years of age, and a resident of this city. I certify as to the identity, occupation, and domicile, of the parties who appear before me, and who exhibited their respective cedulas (certificate of personal tax) for the current fiscal year, and who assure me that they are in the full enjoyment of their civil rights; and considering, I, the notary, that they have the legal capacity necessary for the execution of this deed, they state as follows:

35 *First.* That the said Cartagena appears, representing his own rights; and the said Wellenkamp, in his capacity as attorney for Juan Serralles y Colon, being married, property holder, of age, and a resident of this city, as shown by the power of attorney that the said Serralles y Colon has conferred upon him, which document is now produced, and the heading, respective clauses, and the end of the same, being as follows:

"General Power—Number 391.—In the city of Ponce, island of Porto Rico, the 23rd of August, 1890, before me, Rafael Leon, notary of the notarial college of this province, residing in this city, and with an office in the same, in charge of the notarial office of Jose Rodriguez y Gonzales, in the absence of the substitute Joaquin Mayoral, appeared:—Juan Serralles y Colon, resident of this city, married, property owner, a farmer, and forty-nine years of age.—I certify that I have a personal knowledge of the said Serralles, his occupation and domicile, who exhibits his cedula (certificate of personal tax), and assures me that he is in the full enjoyment and exercise of his civil rights, and having, in my opinion, the legal capacity required for the execution of this deed, states that he confers power to his neighbor, Eduardo Wellenkamp y Chelva,

36 married, property holder and of age. * * * Fifth—That he may sell or purchase privately, or in public sales, or receive, by adjudication, in payment, whether definitely, or under any kind of contracts, any landed or town property for the consideration that he may deem expedient; he being authorized to receive payments in cash or in instalments, receiving the price of conditional sales (*ventas con pacto de retro*) executed or to be executed in the future, in his behalf, with power to execute the deed of sale; and if the price should not be paid over, to appear in the office of the respective registrar of property and demand the completion of the sale. * * * Seventh: That he may loan money or property

of any kind, or take the same as loan on interest, and for the period of time and conditions that he may choose to agree to; collecting and paying out any capital and interest, whenever the same become due, receiving, or delivering, in payment of debts, all kinds of personal property, real property, or livestock, as well as property rights and shares of any kind, on their appraised value, or for the value that he may deem convenient to accept, and under the conditions that he may deem expedient. * * * Twelfth: That he
37 may execute all the deeds that may be necessary in order to perfect and establish legally the transactions that may be entrusted to him by these presents. Thus he executes and signs it with the witnesses and unimpeacheable residents who are present: Rafael Rubio, Eladio Alaya; after the document has been read and found to be correct. To all of which, I certify.

JUAN SERRALLES.
G. R. RUBIO.
ELADIO ALAYA.

Marked with a notarial signet and signed
RAFAEL LEON."

I certify that what has been copied, agrees with the instrument in question, and to which I refer, and that therein does not exist any clause which modifies or limits the powers conferred on the holder of the power of attorney in question, who assures me that the said power has not been revoked nor restricted." And they continue to state:

Second. That Jose Nicolas de Cartagena y Mangual is the owner in fee simple of a share *pro indiviso* representing eighteen per cent. of the total value of eighty thousand pesos of the landed property to be herein described: A sugar plantation, known as "Ursula," situated in the Cintrona ward, municipality of Juana Diaz, of the size of thirteen hundred cuerdas (five hundred and ten hectareas ninety-five areas, seven centiareas,) planted with sugar cane, and containing pastures, brambles and briers, forest and saltpetre
38 beds; it also has a wooden dwelling house of two stories, covered with galvanized iron and shingles; another wooden house, covered with shingles, that serves as a dwelling for the foreman; another house of brick, for the sugar boilers and clarifyers, with a flat roof, and another, containing the steam engine of forty horse-power, with its boiler, hammock and the other accessories, sixty yoke of oxen; thirty-four carts; a right to utilize the waters of the Jacaguas river, and irrigation works; and is bounded on the east, by lands of the plantation "Amelia," of Domingo Palmieri; on the south, by the maritime reservation; on the west, by the plantation "Potala" of Manuel Ferrer (formerly), at present, of the heirs; on the north, by the property of Angela Ferrer.

Third (title). The share in question, which represents eighteen per cent. *pro indiviso* of the landed property above described, on its

total value of eighty thousand pesos, came into the possession of Jose Nicolas Cartagena y Mangual, by adjudication made in his favor, as a result of a settlement affected between Margarita Alomar y Famania, wife of Miguel Rosich y Mas, the party present, Jose Nicolas de Cartagena y Mangual, and the heirs of Juan
39 Jose de Cartagena y Mangual, made up of his widow, Josefa Texidor y Martelo, and his children, Francisco, Juan Jose, Candelaria, and Josefa de Cartagena y Texidor, as shown in the deed executed in this city, on the 27th of June, 1890, before the notary Jose Rodriguez y Gonzales, which deed after the payment of the proper tax on real property rights, was registered in the registry of property of the district, on folio 174, over, of the volume 20, of the municipality of Juana Diaz, estate number 1051, entry number 2.

Fourth (burdens). From the titles exhibited, and the statements of the said Cartagena, there does not appear that the share, representing eighteen per cent. *pro indiviso* of the estate above mentioned, has any burden or incumbrance. And the said Cartagena states also that when the adjudication of the said "Ursula" plantation took place as a result of the settlement referred to in the section 3 of this deed, there were certain conditions stipulated in the deed of settlement, bearing numbers 10 and 11, and which copied literally, read: "Tenth:—Each co-owner is free to sell, mortgage, or lease his share in the said plantation, but giving the option for an
40 equal consideration to the other co-owners. But in the case that a purchaser for the said property, should be found, who would offer the price of one hundred thousand pesos cash, or the equivalent in instalments, with sufficient securities, and payment of interest of ten per cent. per annum, then the sale will be compulsory upon the co-owners; and if any improvements should have been made on the property, the said obligation will cease if the purchaser refuses to pay for the improvements in accordance with the appraisement by experts, in addition to the aforesaid price.—Eleventh—During the five years following the execution of this deed, no co-owner shall be able to demand judicially that the undivided state of the property shall cease, unless the price offered should exceed one hundred and fifty thousand pesos; in such case, even against the will of the co-owners, the whole of the said property may be sold during that time."

I certify that what has been copied, agrees exactly with the instrument of reference, to which I refer.

41 Fifth (value). By the mutual consent of all the parties present, the share in question, which represents eighteen per cent. *pro indiviso* of the value of the estate, is fixed at the sum of eighteen thousand pesos, money current.

Sixth. That Jose Nicolas de Cartagena y Mangual, having agreed to sell to Juan Serralles y Colon, represented in this act, by Eduardo Wellenkamp y Chelva, the share *pro indiviso*, which he has in the said "Ursula" plantation already described, the said share, representing eighteen per cent. of the said estate on its total value of eighty thou-

sand pesos, for the consideration and under the conditions to be hereinafter stated, they perfect their contract by this deed under the following clauses:

First clause. Jose Nicolas de Cartagena y Mangual sells and conveys to Juan Serralles y Colon, represented by his attorney, the party present, Eduardo Wellenkamp y Chelva, the share *pro indiviso* in the "Ursula" plantation described in the section 2 of this deed, the said share representing eighteen per cent. of the said es-
42 tate on its total value of eighty thousand pesos; which sale takes place with all its appurtenances, usages, rights, and easements, without reservation of any kind, conveying to the purchaser a full title to the said share in the said estate, that the purchaser may possess the same as his property and as sole and legitimate owner.

Second clause. The said sale is effected in consideration of the sum of eighteen thousand pesos, commercial money, which shall be paid by the purchaser Juan Serralles y Colon, who is obligated thereto by the party present, Eduardo Wellenkamp y Chelva, and will be received by the party present, Jose Nicolas de Cartagena, in the following instalments: two thousand pesos, on the fifteenth day of July of the year 1898; two thousand pesos, on the same day and month of the year 1899; an equal sum of two thousand pesos, on the fifteenth of July of the year 1900; and three thousand pesos, on the fifteenth day of July of the years 1901 to the year 1904, both inclusive, all of which to be paid in the money current in the commerce, whatever may be the coinage of the money that as such is in circulation or is accepted in this province, at the rate of
43 one hundred centavos (cents) of the money in circulation for each peso, excluding all kinds of paper money in circulation or to be issued, even if its circulation should be compulsory.

Third clause. The parties present in their respective capacity, agree in that the instalments mentioned in the preceding clause, shall bear interest at the rate of ten per cent. per annum from the date of this deed, which interest shall be payable quarterly when due. And they agree also that an interest of twelve per cent. per annum shall be paid for delay on any instalments that are not paid on the date they are due. And, I, the notary, advise them of the right they have to stipulate the interest without being subject to any legal rate, and that the interest they may stipulate, is guaranteed only as far as it appears in the present deed, and in the registration to be made in the registry of property. I also advised the creditor, that he will not be able to claim, by means of a real action on mortgage, to the prejudice of a third party, any more arrears of interest than those corresponding to the last two years, and the portion of the current annuity due, although he retains the right of personal action against the debtor, to exact the payment of
44 those belonging to former years, and to demand, if the case should arise, an amplification of the mortgage.

Fourth clause. The payment of the instalments set forth in clause

number 2, shall be made by Juan Serralles y Colon, to Jose Nicolas de Cartagena y Mangual, in the town of Juana Diaz, in the house of the said gentleman, in the money current on the date that each instalment becomes due, or in the house that he himself, or his legal representative should live, on the date for the payment of the instalments, of which Juan Serralles y Colon will be notified in due time.

Fifth clause. For the security of the said eighteen thousand pesos of the money current, the price in instalments, consideration of this sale, and of the interests stipulated and guaranteed by law, the party present, Eduardo Wellenkamp y Chelva, in the name of his constituent, Juan Serralles y Colon, constitutes a voluntary mortgage on behalf of Jose Nicolas de Cartagena y Mangual, on the said share *pro indiviso* in the estate described in section 2 of this deed, which share represents eighteen per cent., and which is hereby conveyed.

45 Sixth clause. The purchaser, Juan Serralles y Colon, represented by his attorney, the party present, Eduardo Wellenkamp, as party subrogated in place of the vendor, is obligated to respect and comply with the conditions established between the co-owners of the "Ursula" plantation, which has been described in section 2 of this deed, and which conditions are those set forth under number- 10 and 11 in the deed of sale, and which are the same as are copied in section 4.

And it is herein set forth, for the purpose of said conditions, that the co-owners of said "Ursula" plantation are:—Juan Serralles y Colon, who represents three shares, one, representing sixty-four per cent., another, representing the value of eight thousand five hundred and forty-five pesos and 46 centavos, on the basis of a total value of eighty thousand pesos, and another representing eighteen per cent.; and Candalaria de Cartagena y Texidor, married to Alejandro Bermudez Reina, who represents the remaining share, consisting of five thousand eight hundred and fifty-four pesos and 54 centavos, on the basis of eighty thousand pesos.

46 Seventh. The parties to the contract, declare that the price for which said sale is made, is the just and true value, at present, of the share in said estate sold and conveyed, wherefore they renounce all claim on that point, and they agree that, once the said sale and mortgage is registered, the former shall not be annulled or rescinded, to the prejudice of a third party, for any of the causes set forth in article 38 of the mortgage law.

Eighth. For the purpose of article 127 of the said mortgage law, the parties to the transaction, declare the price of the share in the estate mortgaged, to be eighteen thousand pesos, money current, and they renounce and waive all claims to a new appraisement or action for the purpose, they being fully aware that that is the value that shall serve as basis in the public sale that shall be held if the obligation is not paid, and its payment should be demanded judicially.

47 Ninth. The purchaser Juan Serralles y Colon represented by Eduardo Welkenkamp. present, enters from and on this day, in the full use and enjoyment of the rights and dominion which belonged to the vendor over the property sold.

Tenth. They choose this city and its courts for any act or judicial action which may arise from this deed, except in the case provided in the mortgage law, if there should be need of instituting judicial action for the collection of the obligation hereinbefore mentioned.

Eleventh. The parties present, in their respective characters, declare that they accept this deed in all its parts, being conformable to what has been agreed.

And I, the notary, advise them—that the State, the province—and the municipality of Juana Diaz have a preferential right over any other creditor, for the collection of the last annual tax, assessed and unpaid, on the property sold. That within thirty days from this date, they must present a copy of this deed in the proper office for the liquidation and payment of the tax, and the penalties
48 incurred by the omission of this requisite. And also that the said copy must be presented in the office of the registrar of property for its registration, as otherwise the deed will not be effective against a third person, nor be admitted in the courts and government offices, except in the cases and manner established by law.

I read this deed to the parties to the contract, and the witnesses and unimpeachable residents present, Luis Yordan and Jose L. Miranda, because they waived the right to do so themselves, of which right they were advised, and said deed being found to be correct, it was ratified by the parties to the contract, and signed by the said witnesses: to all of which I, the notary, certify.

J. NICOLAS DE CARTAGENA.
E. WELLENKAMP.
LUIS YORDAN.
JOSE L. MIRANDA.

Marked with a notarial signet, and signed:

JOAQUIN MAYORAL, *Notary.*

This copy agrees with the deed number 499, recorded in the protocol of this notarial office, for the current year, to which I refer, and to all of which I certify. And this first copy is issued
49 to the purchaser Juan Serralles y Colon, in Ponce, this 4th day of September, 1894.

Marked with a notarial signet and signed:

JOAQUIN MAYORAL, *Notary.*

There is a notary's seal.

The foregoing document having been examined, it is returned to the interested party, without the payment of the tax on real prop-

erty rights, because the act involved does not require it, by virtue of the fact that the parties to the transaction, have already paid it, as set forth in an annotation of this liquidating office, under this date, written at the foot of the deed of sale and mortgage, executed in this city, the 6th day of October last, in the presence of the notary Joaquin Mayoral, and recorded in the protocol of Rafael Leon. Ponce December 7th, 1894.

(Signed) EMILIO POZUELO.

There is a seal of the liquidating office.

50 *Deed of Sale and Mortgage.*

Number 573.—In the city of Ponce, island of Porto Rico, on the 6th of October, 1894, before me, Mr. Joaquin Mayoral, notary of the "Ilustre Colegio de la Provincia" (notary's association of the province) with residence and office open in this city, in charge of the protocol of Mr. Rafael Leon, during his leave of absence, there appeared: Mr. Jose Nicolas de Cartagena y Mangual, married, agriculturist, forty-nine years of age, and a resident of Juana Diaz, as shown by his personal tax-receipt of class 6th, which was issued to him under number 29, by the collector of internal revenues of said town on the 11th of July ultimo: and Mr. Eduardo Wellenkamp y Chelva, widower, property owner, fifty years of age and a resident of this city, as shown by his personal tax-receipt of class 5th which was issued to him under number 46, by the collector of internal revenues, on the 23rd of July ultimo. I bear witness to my personal knowledge of the persons, business, and residence of the parties hereinbefore mentioned, who assure me that they are in full possession of their civil rights, and having, in my opinion, the legal capacity required for the execution of this instrument, they set forth the following facts:

51 First. That Mr. Cartagena appears in his own right, and Mr. Wellenkamp, in his capacity of attorney of Mr. Juan Serralles y Colon, married, property owner, of age, and a resident of this city, as per power of attorney granted to him by Mr. Serralles, which document we have before us, and the heading, necessary clauses and foot of which, read as follows: "General power of attorney, number 391. In the city of Ponce, island of Porto Rico, on the 23rd of August, 1890, before me, Rafael Leon, notary of the "Colegio de la Provincia" with residence and office open in this city, in charge of the notarial office of Jose Rodriguez y Gonzalez (who is absent on leave), owing to the absence of the regular substitute Mr. Joáquin Mayoral, there appear: Mr. Juan Serralles y Colon, resident of this city, married, property owner, agriculturist, and forty-nine years of age. I bear witness to my personal knowledge of the person, residence, and business of Mr. Serralles, who has exhibited to me his personal tax-receipt, and assured me that he is

in full possession and enjoyment of his civil rights, and having, in my opinion, the legal capacity which is required for the execution of this instrument, he states: That he grants the power of attorney to Mr. Eduardo Wellenkamp y Chelva, married, property owner and of age.

52 Fifth. For the purpose that he may privately, or by public sale, sell or purchase, or receive, by adjudication, in payment, either definitely or subject to any stipulation whatsoever, any real estate, whether rural or urban, for such price as he may deem proper, which shall be payable, either on delivery or by instalments, receiving the (said) purchase price under agreement of deed of trust (pacto de recto) for the sales made, or which may hereafter be made, for his own benefit, furnishing the proper deed of trust (retroventa), and that, if such purchase price be not paid, he may demand of the respective registrar of property, that the sale be perfected.

Seventh. To loan or borrow money or properties of *nay* kind whatsoever, at such time, and at such interest, and under such conditions, as he may see fit to stipulate, collecting and paying the principal and interest upon the same when they become due; he may deliver in payment of debts, chattles, real property or livestock of any kind whatsoever, as well as rights and shares of any nature, at their appraised value or at such value as he may deem proper, and under such conditions as he may see fit to accept.

Twelfth. To execute as many public or private deeds as
53 may be required for the purpose of completing and legally determining the matters which are entrusted to him, hereby.

All of which is duly agreed upon, and duly signed by the principal and competent witnesses, Mr. Rafael Raio and Eladio Alaya, who agree to the present document, after having read and found the same to be correct.

To all of which, I certify.

JUAN SERRALLES.
R. G. RUBIO.
ELADIO ALAYA.
(Signed) RAFAEL LEON.

I certify that the foregoing is a true copy of the document referred to, and that there is no clause modifying or limiting the same, or the powers granted the attorney, who assures me that said power of attorney has not been revoked or restricted.

And the parties present further state:

Second. That Jose Nicolas de Cartagena and his children José (de) Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez, have full ownership of an interest *pro indiviso* in the rural property described below, and in the proportion herein after specified, to wit; A sugar estate called "Ursula," situated in the ward of Cintrona, municipal district of Juana Diaz, with an area of one thousand three hundred "cuerdas," equivalent to five hun-

dred ten hectares, ninety five ares, and seven centiares, con-
54 sisting of sugar cane, pasture, copse, forest, and salt petre beds; a two story wooden dwelling house, with galvanized iron, and shingled roof; another frame dwelling house, with a shingled roof, inhabited by the overseers; another stone house, for the storage and refining of sugar; with a flat roof, a power house, containing a forty horse power engine and boiler, hammock and other accessories; the right to use the water of the Jacaguas river, and irrigation works.

The estate is bounded on the east, by lands of the (sugar) estate "Amelia" of Domingo Palmieri; on the south, by the maritime zone; on the west, by lands of the (sugar) estate "Potala," formerly owned by Manuel Ferrer, and at present belonging to his heirs; and on the north, by the property of Angela Ferrer.

Third. Title.—That Jose Nicolas is the owner of said interest, in a proportion of twelve thousand one hundred and thirty three pesos, thirty three and one third cents, he having been awarded a proportional share, valued at the sum of nine thousand two hundred pesos, in payment of his half of the property acquired during the marriage, and for the losses, and a further sum of two thousand nine hundred and thirty three pesos thirty three and one third cents, in
55 payment of his credit, as reservable property acquired by inheritance from his deceased children, Arcadio and Clorinda, as appears from the proceedings for the distribution of the property left, upon the death of his ligitimate wife, Mrs. Clorinda Perez y Quiñones, which proceedings were duly approved by a ruling, issued on the 14th of September ultimo, by the acting judge of the first instance, Jose de Guzman Benitez, before Carlos F. Chardon, a notary public, the share of five thousand eight hundred and sixty six pesos sixty six and two thirds cents belonging to his minor children, the aforesaid Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez, to whom it was awarded in payment of their inheritance, upon making the distribution of the property already mentioned, the original documents of which proceedings, I certify to have before me.

Fourth. (Incumbrances.)—That said interest has no encumbrance, or lien of any kind.

Fifth. (Value.)—By mutual agreement between the parties, the interest in the property referred to, has been fixed at the sum of eighteen thousand pesos current money.

56 Sixth. That by a deed executed by me, the first of September ultimo, in this same protocol, the party present, Mr. Cartagena y Mangual, considering himself to be the owner of the total interest of 18% of the total value of the property "Ursula," sold said interest to the aforesaid Mr. Serralles for a sum of eighteen thousand pesos commercial money, which the buyer obligated himself to pay in equal intalments of two thousand pesos, each 15th day of July of the years 1898 to 1900, inclusive; and three thousand pesos, each 15th of July of the following years 1901 up to 1904, in-

clusive, the principal bearing an interest of 10% annually, to be paid by the buyer quarterly when due, said interest to be increased to 12% per annum in case of delay in the payment of said instalments; the interest in said estate herein sold, remaining mortgaged pending the payment of the total value of said sale, and the interest agreed upon, and due fulfillment of all the conditions stipulated therein.

57 Seventh. That, as the interest referred to, has the nature of property acquired during marriage, of the *conjugal partnership*, as it was acquired for *a valuable consideration during* the conjugal partnership formed by the party present, Mr. Cartagena and his wife, the aforesaid Mrs. Clorinda Perez y Quiñones, it is evident that when the conjugal partnership was dissolved, the interest or capital belonging to said wife, pertained to her children, and to that effect, after the judicial declarations necessary in the case, had been obtained, the partitions hereinbefore mentioned were made, and Mr. Cartegena and his children were awarded the shares mentioned in statement number three.

Eighth. That with a view to consolidate the contract entered into with Mr. Serralles, the party present Mr. Cartagena requested the proper judicial authorization which was granted to him, in the form and terms set forth in a ruling dated the second instant, and which appears transcribed in the certificate exhibited by him, and issued on the second instant by Mr. Charles F. Chardon y Leon, notary public, the mandatory provision of which document reads as follows:

58 Mr. Jose Merino Lopez, judge of first instance of this city and its judicial district, decreed as follows: "Authorization is hereby granted to Mr. Jose Nicolas de Cartagena y Mangual, to sell to Mr. Juan Serralles y Colon, the interest belonging to the former's minor children, Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael Cartagena, said interest being valued at the sum of five thousand eight hundred and sixty six pesos, sixty six and two thirds centavos, which is eighteen per cent. of the total value of the (sugar) plantation "Ursula," already described, the above sum being payable as follows: two thousand eight hundred and sixty six pesos, sixty six and two thirds cents, in the year nineteen hundred and three, and three thousand pesos, in the year nineteen hundred and four; the alienated interest remaining mortgaged meanwhile as security, and an annual interest thereon, of 10 % being paid by the purchaser.

Thus it was ordered and signed by the aforesaid judge, to which I certify.

JOSE MERINO.

Before me
CARLOS F. CHARDON."

The foregoing is a true copy of the original to which I refer and certify.

59 Ninth. That in the proper and due fulfillment of the contract made with Mr. Serralles, in order that it may appear in authentic form, they transcribe it in the present public instrument, as shown by the contents of the following clauses:

First clause. Mr. Jose de Cartagena y Mangual, in his own right, and as regards his interest in the (sugar) estate "Ursula," which is valued at twelve thousand one hundred and thirty three pesos, thirty three and one third cents, ratifies the aforesaid deed executed before me, on the first of September ultimo, and by virtue thereof he again transfers to Mr. Juan Serralles y Colon, the property and full ownership of said interest, so that he may dispose thereof as the only and exclusive owner.

Second clause. Said Mr. Cartagena, on behalf of his minor children Jose Nicolas, Maria Mercedes, Genaro and Jose Rafael del Carmen Cartagena y Perez, still under the *patria potestas*, and availing himself of the judicial authorization which has been granted him, hereby transfers to the said Mr. Serralles y Colon, the interest which said minors have in the estate "Ursula," valued at five thousand eight hundred and sixty six pesos, sixty six and two
60 thirds cents, so that the purchaser may, in the same manner, dispose of it as the only and exclusive owner thereof.

Third clause. The value of the said two interests, which united, as has been said, represent the 18% of the total value of the plantation "Ursula," is eighteen thousand pesos, current money, which will be paid by the purchaser, Mr. Juan Serralles y Colon, who is obligated by his agent, Mr. Eduardo Wellenkamp y Chelva, to make such payments, which shall be received by the vendors in the following manner; Mr. Jose Nicolas de Cartagena shall receive the sum of twelve thousand one hundred and thirty three pesos, thirty three and one third cents, in equal instalments of two thousand pesos, each 15th day of July of the years 1898, 1899, and 1900; three thousand pesos, on the same date of 1901, a further sum of three thousand pesos, on the same date of 1902, and one hundred and thirty three pesos, thirty three and one third cents, on the same date of the year 1903. And the minors, Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez, shall receive the five thousand eight hundred and sixty six pesos, sixty six and two thirds cents, which will be divided among them into
61 four equal shares at the rate of two thousand eight hundred and sixty six pesos, sixty six and two thirds cents, on the 15th of July of the year 1903, and three thousand pesos, on the same date of the year 1904; all these payments shall be made in current commercial money, whatever the coinage may be of the money which, with such character, be in circulation or accepted in this province, at the rate of one hundred cents of the circulating medium for each peso, and to the exclusion of all paper money created or to be created, even though its circulation be compulsory.

Fourth clause. The parties present, in their respective capacity, agree that the instalments referred to in the preceding clause, shall

draw an annual interest of 10 %, beginning with the 23rd of June last, which interest shall be paid quarterly when the same becomes due. And they also agree that an annual interest of 12 % shall be paid for delay in the payment on any of those instalments, the payment of which is not effected when due. And I, the notary, advise them of their right to stipulate the interest without being subject to any legal rate, and that such interest as may be stipulated herein, cannot be enforced except as far as it is agreed upon in the present deed and appears on the records of the registry of property.

62 I also advise the creditor, that he will not be able to claim, by real mortgage action, to the prejudice of any third party, any other arrears of interest than those corresponding to the last two years, and the portion due for the current year, although he has the right to prosecute a personal action against the debtor, in order to exact the payment of the interest corresponding to previous years, and, to request, if necessary, an extension of the mortgage.

Fifth clause. The payment of the instalments mentioned in clause number 3, shall be made by Juan Serralles y Colon, to Jose de Cartagena y Mangual, at his house, in this city, which is at present his residence, in current money, when each instalment becomes due, or at the house in which the latter, or his legal representative, may reside at the time of making said payments, of which residence the debtor, Juan Serralles y Colon, shall be notified in due time.

Sixth clause. To guarantee the payment of said sum of eighteen thousand pesos, current money, which is the price payable by instalments for this sale, the party present, Eduardo Wellenkamp y Chelva, acting in behalf of his constituent, Juan Serralles y Colon, creates a voluntary mortgage upon the interest, *pro indiviso*,

63 of 18% of the total value of the estate described in the preceding statement, number 2, which is the same share or interest which is being alienated in favor of Mr. Jose Nicolas de Cartagena y Mangual, and his children named Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez; and said interest, which is represented by the sum of twelve thousand one hundred and thirty three pesos, thirty three and one third cents, and has been acquired by the purchaser, from Jose Nicolas de Cartagena, is hereby given as security for an equal sum of money; for five hundred pesos as interest; and for a further sum of five hundred pesos for costs; and the interest represented by the sum of five thousand eight hundred and sixty six pesos, sixty six and two thirds cents, shall guarantee an equal sum of money, and a further sum of five hundred pesos for interest and costs.

Seventh clause. The contracting parties declare that the price for which said sale is made, is at present, the just and true value of the alienated interest in the plantation, that they renounce all claim as regards the price, and that, when said sale and mortgage are recorded, they shall not be annulled or rescinded to the prejudice of a third party on any of the grounds set forth in article 38 of the mortgage law.

64 Eighth clause. For the purpose of complying with the provisions of article 127 of said mortgage law, the contracting parties declare that the price of the mortgaged interest in the estate, is eighteen thousand pesos current money, and that they renounce any other valuation or proceeding leading to such end, as they are hereby advised that said price shall be the basis of the public sale to be held in case the obligations should not be fulfilled, and a judicial action be instituted for the collection thereof.

Ninth clause. The purchaser Juan Serralles y Colon, represented by the party present, Eduardo Wellenkamp y Chelva, shall from and after this date have full enjoyment and possession of the rights and ownership that were enjoyed and possessed by the vendors over the property sold.

Tenth clause. The party present, Jose Nicolas de Cartagena, in compliance with the legal precepts which impose upon him, the obligation to secure in favor of his children and descendents of his first marriage, the value of the real estate which is set apart by law, as is the case with the property which he acquired by inheritance from his deceased children, Arcadio and Clorinda, said property amounting to the sum of two thousand nine hundred and
65 thirty three pesos, thirty three and two thirds cents, as stated in number 3, hereby sub-mortgaged in favor of his aforesaid children, named Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez, the instalment of three thousand pesos, which, according to clause number 3 of the present deed, is to be paid to him, on the 15th of July, 1902, by the purchaser Juan Serralles y Colon, and the said instalment shall have such mortgage until Mr. Cartagena's obligation to reserve the real property before mentioned, shall cease on some legal ground, or until said Mr. Cartagena, with the formalities required by law, shall secure by other real estate, the value of the property to be set apart.

Eleventh clause. The parties present, choose this city and its courts for the institution of the actions and proceedings that may arise in connection with this deed, and they reserve to the state, province, and the municipality, the (preferential) right which they have over any creditor, for the collection of the last yearly tax, levied upon the alienated and unpaid interest.

Twelfth clause. The parties present, in their respective capacity, state that they accept this deed, because of its being in accordance with the stipulation of the contract. And I, the notary, do
66 hereby advise them of the following: That a copy of this deed must be presented, within the term of thirty days, at the proper office for the liquidation and payment of the tax on real property rights, and I also advise them of the penalties that will be incurred by the omission of said requirement; that they must also present a copy of this deed at the office of the registry of property, for the registration of the same, without which formality, it will have no effect against a third party, nor will this document be admitted by the courts, or by the offices of the government, ex-

cept in the manner and cases prescribed by law. Thus it is agreed upon, and duly signed by the principals and unimpeachable witnesses and residents, Enrique Duran, and Augusto Pasarell, after the document had been read to them, as they renounced the right they had, as I told them, to do so themselves. To all of which I, the notary, certify.

J. NICOLAS DE CARTAGENA.
E. WELLENKAMP.
ENRIQUE DURAN.
AUGUSTO PASARELL.

Marked with a notarial signet and (signed)

JOAQUIN MAYORAL, *Notary.*

This is a true copy of the original, recorded in the protocol of this notarial office, to which I refer, and I certify to that effect.

And, for the purpose of delivering the same to Juan Serralles,
67 I issue this first copy on one sheet of the first seal, number five hundred seventy four, and four sheets of the eleventh seal, numbers 115–615–to 115, 618, inclusive, which copy I mark with my notarial signet, and sign in Ponce, the same day and year of the execution of the original deed.

Marked with a notarial signet, and (signed)

JOAQUIN MAYORAL.

There is a notary's seal.

68 *Writing of Attorney Julio M. Padilla to the District Court of Ponce, Offering Evidence.*

To the district court of Ponce:

I, Julio M. Padilla, attorney for Eduardo Wellenkamp y Chelva, in the declaratory action which has been instituted by Belen Esbri, widow of Cartagena, relative to the payment, in a certain kind of money, of the price, and its interest, of a certain estate, fixed in a contract of sale made with Juan Serralles, appear in court, and respectfully offer the following evidence:

1. The confession of the plaintiff Belen Esbri, who, in the presence of the court, on the day and hour fixed by said court, and after having been summoned in due time, shall answer under oath, to the questions put by this party.

2. Documentary evidence.—The two deeds of sale and mortgage of the 1st of September and 6th of October, 1894, executed before the notary public of this city, Rafael Leon y Paz, or rather, before his substitute, Joaquin Mayoral, by Jose Nicolas Cartagena y Mangual, on behalf of Juan Cerralles y Colon.

3. Testimony of the witnesses, whose names will be given within

the legal term, and who should be cited by the court, to ap-
69 pear the day of the hearing, to answer the questions put by this party, and declared pertinent by the court.

4. The presumption that clause 3 in the deed of October 6th, 1894, was inserted in the deed, in so far as it refers to the kind of money, only in consideration of the approaching exchange of the Mexican money for the special money of Spanish coinage, which fact is closely and directly connected, according to the rules, governing human reasoning, with the proven fact that the contract was made to produce its effect within the limits of the province, and that the exchange of the money had already been officially announced at the time the contract was executed.

Ponce, June 12th, 1901.

(Signed) JULIO M. PADILLA, *Attorney.*

70 PONCE, *June 13th*, 1901.

Finding that both parties to this suit have presented their respective evidence, that of the plaintiff consisting of the confession of Eduardo Wellenkamp; and documentary, the letters that, under No. 1 and 2 signed by Belen Esbri, appear in the proceedings, and must be acknowledged by the said lady; the acts executed by the second defendant and first plaintiff in the municipal court of this city, in the oral action brought in that court, and the judgment rendered by this court in the said action, and that of the municipal court, and the summons served on Eduardo Wellenkamp in the said action, a certified copy of a general power of attorney executed in New York by Julia Serralles, on behalf of Wellenkamp, recorded in the notarial office of Rafael Leon; and a certified copy of another power of attorney executed by Emilio Serralles, on behalf of Wellenkamp, which exists in the notarial office of Rosendo Matienzo;—The defendant's evidence consists of the plaintiff's confession; documentary—two certified copies of deeds attached to the proceedings; the testimony of the witnesses, whose names he will give
71 within the legal term; and presumption.

Concluding that all the evidence offered by the litigants is such as is accepted by the law, and, therefore, must be declared pertinent:

Therefore, all the evidence offered by the parties to the suit, is declared pertinent.

The 26th of July next, at nine o'clock in the morning, is fixed for the oral trial, for which day and hour the parties to the suit, shall be summoned for their testimony and confession, as well as the witnesses they may designate, and the latter shall be warned that they will be subject to a fine of twenty dollars, if they do not appear. For the examination of the documentary evidence offered by the plaintiff, under No. 1, let there be brought to this trial, the record of the oral action to which it refers, requesting said record of the municipal court of this city, since this manner is more efficacious than

the specification of the acts indicated by said party. The first day of July next, at two o'clock in the afternoon, is set for the examination and comparison to be made by the notary Leon, of the documents constituting the documentary evidence No. 2; and the second day of said month, at two o'clock in the afternoon, is set for the examination and comparison to be made by the notary Matienzo, of the
72 documents constituting the documentary evidence No. 3; and let the secretary issue a certified copy of the judgment rendered by this court, in the oral civil action referred to in the documentary evidence No. 1; and let all this be carried into effect under summons of the opposing party.

Thus it was agreed upon and signed by the judges of the court, to which I certify.

(Signed) ISIDORO SOTO NUSSA.
(Signed) R. SANCHEZ MONTALVO.
(Signed) CARLOS FRANCO SOTO.
(Signed) LUIS GAUTIER.

73 *Copy of that Part of the Proceedings in the Oral Trial which Refers to the Principal Point at Issue.*

The counsel Padilla requested the court that its decision be modified, and subsidiarily asked the same to admit his appeal in cassation from said decision; requesting that his protest be noted in the record, to that effect.

The court acting on the same grounds, which are stated in the decision from which appeal is taken, decided not to grant the modification requested, and that the counsel's protest for the purpose of his appeal, be noted in the record.

The proceedings were continued with regard to the principal point at issue; plaintiff renouncing the evidence to be brought out by confession (of the opposing parties), and requesting that the documentary evidence be taken consideration.

The defendant also renounced the evidence to be brought out by confession (of the opposing party), and requests that the documentary evidence be taken into consideration.

74 The hearing of the evidence of the witnesses for defendant, was proceeded with:

There appeared Guillermo Shuck, 52 years of age, married, merchant, a resident of this city, and legally qualified to act as witness in these proceedings. To the questions asked by counsel Padilla, he states that he knows that the commercial transactions on documents similar to the one which is the subject of this suit, were all made in equivalent value. To the questions asked by counsel Torres, he answered that he is not acquainted with the manner in which the transactions on documents, containing the disputed clause, have been made.

Mr. Francisco Parachini, a resident of this city, married, 32 years

of age, merchant and legally qualified to act as a witness to this action. To the questions asked by counsel Padilla, he answered, that the commercial transactions have been made in the equivalent value, and that the documents held by him, contained no clause.

Antonio Catinche, a resident of this city, married, broker, 42 years of age, and legally qualified to act as a witness in this action. To the questions asked by counsel/ Padilla, he states, that in the cases of documents in which he has intervened, and which docu-
75 ments contained clauses similar to, if not exactly like, the one discussed in connection with the instrument, which is the subject of this trial, the operations were made on the basis of equivalent value.

After the hearing of the evidence, the counsels were allowed to present their arguments, and made the statements which they deemed pertinent.

Whereupon the court adjourned, the 16th instant, at 9 a. m., having been set for voting the sentence, and the parties having been cited to appear. The latter signed, together with the judges, and I certify.

(Signed) ISIDORO SOTO NUSSA.
(Signed) R. SANCHEZ MONTALVO.
(Signed) CARLOS FRANCO SOTO.
(Signed) LIBERTAD TORRES GRAU.
(Signed) JULIO PADILLA.

76 *Act of the Voting of the Judgment.*

The presiding judge. The ass't judges. In the city of Ponce, the 17th day of September, 1901, the court being in session and composed of the judges, whose names are written on the margin, for the purpose of voting the judgment to be rendered in the declarative proceedings instituted by Belen Esbri, widow of Cartagena, against the heirs of Juan Serralles y Colon. The hon. president, Ysidoro Soto Nussa, formulated the following questions:

Is it proper and lawful to declare the action to have been well taken, and likewise to declare that the heirs of Serralles are bound to pay in American money the interest or revenue (rentas) due, by virtue of clause 3 of the contract of sale, executed October 6th, 1894, between Juan Serralles and Jose Nicolas Cartagena; and that the future interests or revenues (rentas) and instalments to become due, must be paid in the money current in the commerce, whatever may be the coinage of the money that as such circulates or is accepted in this island, at the rate of 100 cents of the money in circulation for each one peso?

Is it proper and lawful to condemn the defendants to the payment of the costs?

77 The associate judge, Rafael Sanchez Montalvo, replying in the affirmative to the questions put; the associate judge, Carlos Franco Soto, replying in the negative to both questions; and the presiding judge replying in the affirmative to both questions.

This terminated the act, which is signed by the members of the court. I certify.

(Signed) YSIDORO SOTO NUSSA.
R. SANCHEZ MONTALVO.
CARLOS FRANCO SOTO.

(Signed) LUIS GAUTIER (*Secretary*).

78 *Dissenting Opinion of the Associate Judge, Carlos Franco Soto, of the District Court of Ponce.*

The undersigned associate judge formulates his dissenting opinion in the judgment rendered by the court, in this suit this day, in the following manner, accepting the finding of the other two members of the court:

Concluding that, the question at issue in the present case, is a question of law exclusively, because it deals with the construction of a clause in a contract of sale, which literally copied, reads as follows: "The said sale is made in consideration of the sum of eighteen thousand pesos commercial money, which shall be paid by the purchaser Juan Serralles y Colon, who is obligated by the party present, Eduardo Wellenkamp y Chelva, and will be received by the party present, Jose Nicolas de Cartagena, in the following
79 instalments: 2000 pesos, on the 15th of July, 1898; another sum of 2000 pesos, on the same day of the same month of the year 1899; an equal amount of 2000 pesos, the 15th of July, 1900; and 3000 pesos, on the 15th of July of the years 1901 to 1904, both inclusive, all of money current in the commerce, whatever may be the coinage of the money that as such circulates or is accepted in this province, at the rate of one hundred cents of the money in circulation for each one peso, excluding all kinds of paper money, in circulation or to be issued, even though its circulation be made compulsory;" and on this clause, the plaintiff pretends to collect the remaining instalments and interest due in American gold, at the rate of one hundred cents, (American money), for each peso, without the legal discount of forty per cent., the contract of sale having been effected the first of September, 1894, at a time when the money in circulation in the commerce was the Mexican peso.

Concluding that, although in the obligations which arise from the concurrence of the will of the parties, this will is the supreme law, it is necessary, however, that said obligations be always within the sphere of the law, morality, and good customs.—Article 1001 in relation to article 1116 of the Civil Code.

80 Concluding that, since the organic law of the Congress of the United States, approved the 12th of April, 1900, provides that all debts pending when the said law commences to take effect, shall be paid in money of the United States, at the rate of exchange, the claim made by the plaintiff is absolutely unjustified, the said plaintiff having only the right to collect only the equivalent in American gold, or what is the same, in American money, with the discount established by law.

Concluding that, before the passage of the law, which was to adjust all questions arising from the exchange of the Porto Rican special money, for the United States money, the spirit of the said law was already reflected in the custom of the country, since in the transactions in commerce the carrying forward of accounts current from old books to new books, was made bearing in mind the rate of discount already cited.

Concluding that, even if we prescind from the custom prevailing and from what has been clearly and conclusively set forth in the law already mentioned, and examine the literal meaning and the spirit of the contract, even then the plaintiff's claim appears to be unjustified. The literal meaning is not by itself sufficient to

81 determine the intention of the parties, which must prevail over the letter of the contract; and said intention never, and in no manner whatsoever, can have had relation to the present conditions of things, which has come to all like a dream, even to those that were most awake.

Concluding that, when a doubt arises as to the interpretation of a contract, no application can be made of the doctrine that in all contracts the will of the parties is the law governing them, and that the words used in the same, must be understood in their general sense and as they sound; but in such a case the judge must determine their true meaning, and, for that purpose, fix his attention more especially on the object and purpose the contracting parties had in view at the time they made the contract, than on the words used in expressing the same, to which end, it is indispensable to consider the facts which were contemporary with the making of the contract, as well as those which subsequently took place.

Concluding that, applying the foregoing principle, and bearing in mind the circumstances contemporary with the date of the contract, that the exchange of the Mexican money for the special money

82 of Spanish coinage had already been decreed, which fact by itself explains the fundamental reason why the 3rd clause *i. e.* the one in question, has been inserted in the contract, and clearly demonstrates beyond any doubt the manifest intention of the parties,—on the part of the vendor to guard against the loss, which the said coming exchange might cause to him, since it had been decreed at a discount of five per cent.; and on the part of the purchaser, to assume this loss.

Concluding that, in corroboration of what has been stated, there exist circumstances posterior to the execution of the contract, such

as the payments made in the special Spanish currency without discount, as regards the Mexican money, whereby the purchaser complied with what had been agreed upon, provided, and intended by the parties, upon binding themselves, the contract thus being carried out, without the said discount, as was in the mind of the contracting parties.

Concluding, that, after it had thus been demonstrated by these circumstances posterior to the execution of the contract, that the said contract has had the desired effects, it is, to speak plainly, not possible to revive the said effects under circumstances that are new and were absolutely undiscernible even to the most per-picacious
83 foresight of the contracting parties, on account of their being unexpected.

Concluding that, if the vendor's pretentions were accepted, the true value of the thing would be altered, as the money of the United States has a higher commercial value then the Mexican money, just as it had a much higher value then the former special money of Spanish coinage.

In view of the articles of law cited, this complaint ought to be dismissed with the costs to the plaintiff.

Ponce, September 17th, 1901.

(Signed) CARLOS FRANCO SOTO.

84 *Judgment of the District Court.*

In the city of Ponce, island of Porto Rico, on the 17th day of September, 1901; having examined the "declaratory action" carried on between the parties Doña Belen Esbri y Roubert (complainant) of this city, widow, of age, and represented by Counsel Libertad Torres, and the heirs of Juan Serralles y Colon (defendants) represented by Don Eduardo Wellenkamp y Chelva, of this city, whose counsel is the lawyer Don Julio Maria Padilla, which action was entered for the collection of interests in American money; the judge "ponente" for the drawing up of this judgment, being Lawyer Don Rafael Sanchez Montalvo.

Finding, that on the 18th of April, this year, Doña Belen Esbri y Roubert, widow of Cartagena, represented by Attorney Don Libertad Torres Grau, entered the present "declaratory action" against the heirs of Don Juan Serralles y Colon, and prayed the court to declare that the said heirs, by virtue of what had been expressly agreed to in clause 2 of the deed of sale of the 6th of October, 1894, drawn up between Don Juan Serralles and Don Nicolas de Cartagena,
85 are bound to pay the said Doña Belen Esbri y Roubert, widow of Cartagena, the interests due up to date on which the action was entered, in American gold, which is the money current at present in the commerce of this island, and in due time those becoming due, as well as her share in the instalments falling due in 1902 and 1903, which are among those stipulated in the said deed, and which

share was adjudged to her in the division of the estate left by her already mentioned husband; the legal interests on the interests due and unpaid, and the costs; alleging that in the distribution of the property left by Don Nicolas de Cartagena y Mangual, husband of the plaintiff, under No. 3 of the inventory, there appeared 12.133 pesos and 33⅓ cents, which the said Serralles y Colon owed by virtue of the sale, which, by a deed executed on the 6th of October, 1894, before the notary, Don Joaquin Mayoral, Don Nicolas had made to Don Juan Serralles y Colon, of a share of 18%, which the former had in the sugar plantation, called "Ursula," situate in the ward of Cintrona of the municipal district of Juana Diaz; and which amount the aforesaid Serralles y Colon had bound himself to pay, together with an interest of ten per cent. per annum, in quarterly instalments, (when due) in the following manner: 2000 pesos, on the 15th of
86 July of the years 1898, 1899, and 1900; 3000 pesos, on the 15th of July of the years 1901 and 1902; and 133 pesos and 33⅓ centavos, on the 15th of July, 1903; the estate remaining meanwhile mortgaged as security for the fulfillment of the agreement. That in the aforesaid division of the estate, the following was adjudged to the widow Doña Belen Esbri y Roubert, as her part in usufruct: A share of 1165 pesos in the debt guaranteed by mortgage, included in the inventory under No. 3, to be paid as follows: 1031.66⅔ centavos out of the instalment due on the 15th of July, 1902, and 133 pesos 33⅓ centavos which constitute the amount of the instalment becoming due on the 15th of July, 1903, both amounts aggregating 1165 pesos. All that has been stated, is evident from the document produced and bearing No. 1. That among the clauses of the deed of sale to which reference is made in the second fact, is to be found the following: "Second. The said sale is effected for the amount of 18000 pesos, commercial money, which shall be paid by the purchaser, Juan Serralles y Colon, who binds himself by the party present, Eduardo Wellenkamp y Chelva, (as his attorney-in-fact)—and received by Don Jose Nicolas de Cartagena, in the following instalments: 2000 pesos, on the 15th of July,
87 1898; 2000 pesos, on the 15th of July, 1899; 2000 pesos, on the 15th of July, 1900; and 3000 pesos, on the 15th of July of the years 1901 to 1904, both inclusive, all in money current in the commerce, whatever the coinage of the money may be, which, with such character, be circulating or accepted in this province, at the rate of 100 cents of the current money for each one peso, excluding all kinds of paper money issued or to be issued, although its circulation be made compulsory."—That when on the 15th of September of last year, a quarterly interest became due, and had to be paid by Don Juan Serralles y Colon, or his heirs, to Dona Belen Esbri, on the share adjudged to her, and was claimed from the representative of said heirs, the said Don Eduardo Wellenkamp y Chelva, he refused to effect the payment in the money circulating in this island, and pretended to pay an amount equivalent to the value of the provincial money, which was no longer in circulation;

for which reason, the said Doña Belen Esbri entered an action in the municipal court of this city, which rendered a final judgment, sentencing the heirs of Serralles (defendant) to the payment of the quarterly interest claimed, in the American money, now in
88 circulation, and to the payment of the costs.—That an appeal having been taken by Mr. Wellenkamp, as the representative of the heirs of Serralles, from the said judgment, this court sustained the claim of the plaintiff, and ordered that the plaintiff be paid in American money, basing its decision on the fact that the clause of the said contract was very clear, and that the judicial order of the 25th of February, 1899, regarding the question at issue, had no retroactive effect, and because the case in question was not a case of a loan or debt contracted in provincial money, nor was it a question of a promise requested by the debtor.

Finding, that, the defendant having been notified of the decision rendered, he replied within the legal time, basing his reply on the following facts:

1. He admits the nine facts contained in the bill, making these mere rectifications, to wit: That the judgment, on second instance, referred to in fact No. 6, was rendered by a majority of votes, and not by a unanimous vote, one of the judges having dissented and voted in favor of the right of Mr. Wellenkamp; that in the
89 second concluding of the said judgment the word "province," used by the parties to the contract in the clause in question, is substituted by the word "island," in construing the said clause; that the heirs of Juan Serralles never refused to pay the interest in the equivalence; and that the deed of the 6th of October, 1894, is not the original deed of the contract, since it was executed for the purposes of ratifying the deed of the 1st of September of the same year.

2. In both deeds, the clause in question reads as follows: "all (the payments shall be made) in money current in the market, whatever the coinage of the money may be, which, with such character, be circulating or accepted in this province, at the rate of one hundred cents of the current money for each peso, excluding, etc."

3. On the 6th of October, 1894, when the second contract was executed, wherein the said clause is inserted, there was in circulation in Porto Rico the Mexican money, the withdrawal and exchange of which had already been officially announced; in fact, the Budget Law of the 6th of August, 1893, for the fiscal year 1893–1894, authorized the substitution of the Spanish silver for the Mexican silver. (Official Gazette of Madrid, of the third quarter of the
90 year 1893, page 473). The royal decree of the 17th of August, 1895, created a paper money for the purpose of withdrawing and substituting the Mexican money; another royal decree of the same date, authorized the making of the contracts without calling for bids, for the services required in connection with the carrying out of the exchange; the royal orders of the same date, and of the 11th of September, 28th of October and the 28th of November, con-

tained several provisions, tending to prepare and facilitate the withdrawal and exchange of the money; and the royal decree of the 6th of December declared the Mexican money out of circulation, and created in its place the *special* peso of Spanish coinage. The government of Porto Rico, on the 20th of March, 1896, retired from circulation the Spanish money which formerly circulated, and in the same year the exchange of the Mexican money for the *special* money was also completed.

4. The heirs of Serralles paid to Dona Belen Esbri in provincial money without discount, up to the 15th of July, 1900, the instalments and interest due, in Mexican money.

5. This island was a Spanish province, up to the 11th of
91 April, 1899, when it was ceded to the American Government, which has formed of it a body politic of a different nature, which is called "The People of Porto Rico," as provided in the act of Congress passed on the 12th of April, 1900.

6. On July 31st, 1900, the Spanish special currency was withdrawn from circulation and exchanged for the American money, at the rate of 60 cents of the American money for one hundred cents of the special currency.

7. Clauses 3 and 8 of the deed of the 6th of October, 1894, and the corresponding clauses 7 and 8 of the deed of the 1st of September, of the same year, determine the just value of the property, and its valuation, in case of its sale by auction, at 18,000 pesos of the money then in circulation.

Finding, that, notices having been served on the parties, to appear and produce their proofs, each one produced his in writing, enclosing the documents referred to in said writing, and a certified copy of the judgments rendered by the municipal court, in the "oral action," to which the plaintiff refers, and also certified copies of the powers of attorney granted by the heirs of Serralles, in behalf of Don Eduardo Wellenkamp, and also the original record of
92 the proceedings in the "oral aetion" referred to.

Finding, that a day having been fixed for the oral hearing, the witnesses were examined, and Don Guillermo Schuke declared: That he knows that the transactions effected in commerce with documents resembling the one which is the origin of these proceedings, were all paid in the equivalent; but that he does not know how the transactions have been effected with documents wherein the clause in question has been inserted.—Don Francisco Paraccini declared that the transactions in commerce had been effected in the equivalent; but that the documents in his possession, had no clause.—Don Antonio Catinchi declared, likewise, that in the cases of instruments in which he had intervened, containing clauses resembling the one in question, although they were not so concrete, the transactions had been made in the equivalent.

Finding, that in the deed of sale and mortgage, executed by Don Jose De Cartagena y Mangual, on the 6th of October, 1894, in favor of Don Juan Serralles y Colon, it is stipulated, in clause 3, that all the

payments that may be made by Serralles, to the vendor, as
93 instalments on the said sale and mortgage, shall be made in money current in commerce, of whatever coinage the money may be, which, with such character, be circulating or accepted in this province, at the rate of one hundred cents of the money in circulation for each peso, excluding all kinds of paper money, issued or to be issued, even if its circulation be compulsory.

Finding, that, this day having been fixed for the voting of this judgment, the majority voted for it.

Finding, that, in the proceedings in the present case, all the legal formalities have been complied with.

Concluding that, the contracting parties, by virtue of the contracts made by them according to law, are bound to fulfill their agreements, provided they are not against the laws, public morals, and good customs.

Concluding, that, since the will of the vendor and of the purchaser is stipulated in every one of the clauses contained in the deed of the 6th of October, 1894, is definite and clear, we must submit to the same, and there is no necessity for turning to other considera-
94 tions, for the same reason that the said contract is not contrary to law, to public morals or good customs.

Concluding that, as a consequence of what has been established, if in clause 3 of the said instrument, it appears that Don Juan Serralles y Colon bound himself to make the payments to said Cartagena, by virtue of the said contract of sale, in money current in commerce, of whatever coinage it may be, at the rate of one hundred cents of the current money for each *peso*, it is plain and evident that the heirs of said Serralles are bound to pay in *dollars* all the instalments arising from the said contract, or the interest on the same, for, dollars are the money current at present in this island.

Concluding that, on account of the grounds herein set forth, it is proper to declare the action to have been well taken.

Concluding that, the costs are always imposed upon the litigant, whose claims have been totally rejected. Articles 1116, 1125, 1261, 1278 and 1285, of the Civil Code, and section 63 of the general order number 118, having been examined:

95 We adjudge that, declaring this action to have been well taken, we should likewise declare, and do declare, that the heirs of Don Juan Serralles y Colon are bound to pay to Doña Belen Esbri y Roubert, widow of Don Nicolas de Cartagena y Mangual, the interest due up to date, arising from the contract of sale made by Cartagena and Serralles, on the 6th of October, 1894, in American money, which is the money in circulation at present in the commerce of this island, and that in due time the interest becoming due, as well as the share in the instalments, belonging to her by virtue of the said contract, falling due in the years 1902 and 1903, and which were adjudged to her in the division of the estate left by her mentioned husband, Señor Cartagena, be paid in the money current in commerce, of whatever coinage the money may be, which, with

such character, be circulating or accepted in this island, at the rate of one hundred cents of the current money for each peso; and we condemn the heirs of said Serralles to the payment of the interest on the interests due and unpaid, and to the payment of the costs. Thus, by this our judgment, we pronounce, command and sign it.

(Signed) ISIDORO SOTO NUSSA.
(Signed) R. SANCHEZ MONTALVO.
(Signed) CARLOS FRANCO SOTO.

96 *Part of the Writing of Mr. Wellenkamp, through His Counsel Padilla, Establishing an Appeal in Cassation, Based on Violation of Law.*

I base the appeal for violation of law on paragraphs 1 and 7 of article 1690 of the Law of Civil Procedure, to wit:

On paragraph 1 for the following reasons:

1. Because the judgment contains a violation of the "law temporarily to provide revenues and a civil government for the island of Porto Rico, and for other purposes," approved by the Congress of the United States, April 12th, 1900, which is applicable to the case, section 11 of which has been violated in that its definite and clear text was prescinded from in deciding the point at issue, to the effect that the defendant must pay, regardless of the rate of exchange between the money of Porto Rico and that of the United States.

97 2. Because the judgment, by decreeing the payment in American money, makes an improper application of article 1281 of the Civil Code, assuming that the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, to fix, for the payments, the official standard of the money in circulation at the time the said payments are to be made; when precisely the clause of the contract, excluding the money of compulsory circulation (legal tender) establishes that the payments shall be made in any kind of money that is admissible in the commerce, provided that each of its pesos represents one hundred cents of the money in circulation.

3. Because the judgment violates article 1283 of the Civil Code, in that it considers as comprised in the generality of the terms of clause 3 of the contract, a case different from that, with regard to which the persons interested intended to contract, which is that of the alteration in the value of money by a change of sovereignty in Porto Rico; it being evident that the parties could only have in mind the said alteration in the value of the money in case the

98 sovereignty remained the same, as evinced by the word "province," used by the contracting parties, and the official announcement of an approaching exchange of the Mexican money for the Spanish provincial currency, made in the budget law of

Porto Rico for 1893–1894, which had been approved already at the time the contract was executed.

4. Because an improper application has been made of article 1258 of the Civil Code by imposing, as the performance of what had been expressly stipulated, the payment of one hundred cents of the American money in circulation, (with regard to the instalments due and the interest on the same,) or of the money in circulation at the time the pending instalments will become due, for each peso of the Mexican money that was in circulation at the time the contract was made; whereas clause 3 of the contract, as has been remarked, contains no other relation than that of the commercial peso to the money of compulsory circulation, comparing one with the other at the time of the payment.

5. Because of the violation of the legal doctrine, accepted by the supreme court of Spain, in its decision of the 30th of October,
99 1891,—*ubi est eadem ratio, ibi eadem dispositio juris esse debet*,—inasmuch as the judgment has not applied articles 1170, 1500 and 1754 of the Civil Code, which it should have done, bringing said articles into harmony with each other; since the great analogy that exists between the obligation of a person, who owes money for a loan, and that of a person, who owes it as vendee, as demonstrated by the express reference made by article 1754 to article 1170, and the silence kept by article 1500, respecting the kind and quantity, should have led the judge to apply in *sensu contrario* the text of article 1754, in this part of it: "If what has been loaned is a quantity of metal not coined, the debtor owes a quantity equal to that received, and of the same kind and quality, even though it may have suffered a change in its price." So that in the case of coined metal the debtor owes the money in the specie stipulated, (article 1170,) but in different quantity and quality if its value has suffered an alteration.

100 6. Because of the violation of the principle of law *jus publicum privatorum pactis mutari non potest*, which according to paragraph 2 of the Civil Code, is applicable when there is no express law on the subject; for, as article XIII of the treaty of Paris, (public law) has authorized the Government of the United States, to modify not only the political constitution, but also the civil rights of the inhabitants of Porto Rico, and as in consequence of this the act of Congress of the United States of the 12th of April, 1900, was passed, the public law—under which falls implicitly section 11 of the said act—would be affected by clause 3 of the contract made between Cartagena and Serralles, if the heirs of the former received from those of the latter, payment, in American money without any discount, for a debt which was contracted in Mexican money.

On paragraph 7 of article 1690, for the following reason:

An error of law in the consideration of the evidence, because upon considering the evidence consisting of clause 3 of the contract of October 6th, 1894, it was done according to the criterion
101 of articles 1091 and 1255 of the Civil Code, while the said evidence should have been considered according to the criterion

of the act of April 12th, 1900, (section 11) since the special law prevails over the general law, which is only supplementary to it. (Article 16 of the Civil Code and section 8 of the said law.)

Therefore, and under article 81 of general order No. 118, of August 15th, 1899, *I pray* your honors, to be pleased to consider the aforesaid appeal as having been taken, and to admit the same, ordering that the original proceedings be forwarded to the supreme court, after summoning the parties.

Ponce, November 25th, 1901.

(Signed) JULIO M. PADILLA.

102 PONCE, *November 25th*, 1901.

The foregoing writing of appeal has been presented to this court: let the same be annexed to the record of the respective proceedings:

Finding that the counsel for defendant has taken, within the time allowed by law, an appeal in cassation for error in procedure and violation of law, from the judgment rendered by this court on the 17th of September last.

Concluding that the appeal taken is in accordance with the provisions of the law of civil procedure and general order No. 118, it is proper to admit the same.

The appeal in cassation taken by the counsel for defendant from the judgment of this court, is hereby admitted. In consequence hereof let the original records be transmitted to the supreme court, after citation and summons of the parties for a term of ten days.

(Signed) ISIDORO SOTO NUSSA.
(Signed) R. SANCHEZ MONTALVO.
(Signed) CARLOS FRANCO SOTO.
(Signed) LUIS GAUTIER.

103 *Writing to the Supreme Court of Porto Rico of Eduardo Wellenkamp y Chelva, Represented by His Counsel, Jose De Guzman Benitez, Perfecting the Appeal in Cassation for Violation of Law.*

To the supreme court:

I, Attorney Jose de Guzman Benitez, counsel for Eduardo Wellenkamp y Chelva, the attorney for the heirs of Juan Serralles y Colon, appear before the court in the proceedings of the appeal in cassation taken from the judgment rendered by the court of Ponce, in the suit brought against my clients, by Belen Esbri, widow of Cartagena, for the collection of certain sums of money, in a fixed kind of coin, and beg to respectfully state: That, desisting from the appeal in cassation for error in procedure, I perfect the appeal which, simultaneously with it, my clients have taken from the judgment of the lower court, for violation of law and error in the consideration of the evidence.

104 I base this appeal on paragraphs 1 and 7 of article 1690 of the law of civil procedure, and on sections 78 and 79 of the general orders number 118, series of 1899, and I proceed to consider each one of these cases separately, making previously a brief statement of the facts:

Facts.

1. By a deed dated the 1st of September, 1894, which was ratified by another deed of October 6th, of the same year, both of which deeds were executed in Ponce, in the office of the notary Rafael Leon, Jose Nicolas de Cartagena y Maugual sold to Juan Serralles y Colon, represented by his attorney, Eduardo Wellenkamp y Chelva, a share on certain landed property for the consideration of eighteen thousand pesos, money current at the time, fixing terms for the payment of the stipulated price, as appears from the following clauses:

105 *Deed of the First of September*, 1894.

(Clause 2) folio 42: "Said sale is effected in consideration of the sum of eighteen thousand pesos, commercial money, (moneda comercial) to be paid by the purchaser, Juan Serralles y Colon, who is obligated by the party present, Eduardo Wellenkamp y Chelva, and will be received by the other party present Jose Nicolas de Cartagena, in the following instalments: 2,000 pesos, on the 15th of July of the year 1898; 2,000 pesos, on the same day and month of the year 1899; an equal amount of 2,000 pesos, on the 15th of July, 1900; and 3,000 pesos, on each 15th of July of the years 1901 to 1904, both inclusive; all of which payments are to be made in money current in the commerce, whatever may be the coinage of the money that as such circulates or is accepted in this province, at the rate of one hundred centavos (cents) of the money in circulation for each one peso, excluding all kinds of paper money in circulation or to be issued, although its circulation be compulsory."

106 *Deed of October Sixth*, 1894.

(Folio 52, portions of clause 3.)—"The value of these two shares which together, as has been stated, represent eighteen per cent. of the total value of the "Ursula" plantation, is the sum of eighteen thousand pesos current money, (moneda corriente) which shall be paid by the purchaser Juan Serralles y Colon, etc., etc., * * * all these payments to be made in money current in the commerce, (en moneda corriente en el comercio) of whatever coinage the money may be, which, with such character, be circulating or accepted in this province, at the rate of one hundred centavos (cents)

of the money in circulation for each one peso, excluding all kinds of paper money in circulation, or to be issued, although its circulation be compulsory."

107 2. Jose Nicolas de Cartagena and Juan Serralles having died, Belen Esbri, widow of the former, to whom was adjudicated, as her share, a part of the debt resulting from the price stipulated in the said contract of sale, has filed her claim judicially against the heirs of Juan Serralles, demanding that the instalments (rentas) due, and future revenues, as well as the instalments to become due on the said debt, be paid by the heirs of the purchaser, in American gold, which is the money current in the island of Porto Rico at present, at the rate of one hundred cents, or one dollar, for each peso of those stipulated as the price of the share in the landed property sold.

3. The court of Ponce, by the judgment rendered on the 17th of September last, declared by a majority of votes, that the action did lie, and sentenced the heirs of Serralles to pay the revenues (rentas) due and those to become due, and the pending instalments, at the rate of one hundred cents American gold, that is one dollar, for each peso of the price stipulated, plus the interests and the costs of the suit.

108 4. The dissenting opinion of one of the judges is contrary to the opinion of the majority, and declares that the action does not lie.

Ground for the Appeal for Violation of Law.

Paragraph 1 of article 1690 of the Law of Civil Procedure.

The judgment in question, contains a violation, an erroneous construction and an improper application of the laws and legal doctrines applicable to the case argued in this suit, to wit:—

1. Violation of articles 1091, 1256, and 1258 of the Civil Code.—The literal context of the second and third clauses, respectively, of the deeds of the first of September and the sixth of October of the year 1894, shows conclusively that the will of the contracting parties, Messrs. Cartagena and Serralles, was to fix the price of the share sold by the former to the latter, at eighteen thousand pesos of

109 the money current in the country on the date of the contract. This was the principal basis of the contract. As the exchange of the Mexican money for the special currency, was approaching at the time, it was logical to anticipate in the contract the loss of five per cent., which was the discount fixed on the former currency. Consequently the necessary stipulation was made so as not to diminish the amount fixed as the price, which necessarily must be eighteen thousand pesos of the commercial money current in September of 1894; but never less nor more than that amount. The judgment, therefore, violates articles 1091, 1256 and 1258 of the

Civil Code, which determine the strict extent of obligations and contracts in accordance with the terms fixed by the contracting parties.

2. Infraction of articles 1445, 1449, and 1500 of the Civil Code.—One of the essential requisites for the existence of a contract of purchase and sale, is that the price be fixed with certainty; the fixing of which price cannot be left to the will and pleasure of one of the contracting parties, the obligation of the purchaser being that of paying the price which has been agreed upon, as provided in
110 the articles above mentioned.

The judgment of reference alters substantially the value of the thing sold, giving it a price which exceeds by more than one third the just value of eigteeen thousand pesos of the money then in circulation in the island, and which was the price agreed upon by the purchaser and the vendor; for the commercial peso of that time, when calculated on the basis of its hundred centavos, has a value equal to sixty cents of the American money at present in circulation. So that while the real intrinsic value, the commercial value, and even the legal value of the eighteen thousand pesos of Porto Rican money, is equivalent, in American gold, to ten thousand eight hundred dollars only, the judgment of the Ponce court increases it capriciously by seven thousand, two hundred dollars, to the great prejudice of the purchaser, and in violation of the legal precepts which determine the certainty of the price in a contract of sale.

111 3. Violation of section 11 of the "Organic act temporarily to provide revenues and a civil government for the island of Porto Rico, and for other purposes," passed by the Congress of the United States April 12th, 1900.—The said section 11 provides in an absolute and positive manner that all debts pending when the said law goes into effect, shall be payable in the money of Porto Rico at present in circulation, or in money of the United States at the rate of sixty cents of the United States currency for each peso of the Porto Rican currency. It is therefore evident that a violation of the said law has been committed in the judgment of reference.

4. Violation of articles 1281, 1283, 1284, and 1289 of the Civil Code, which refer to the interpretation of contracts.—The court of Ponce departing from the clear terms of the contract of sale, wherein it appears that the price of the thing sold is fixed at eighteen thousand pesos of the commercial money current in Porto Rico, in September and October of the year 1894, begins by judging of
112 the intention of the parties to the contract, thus violating article 1281 of the Civil Code. The judgment besides violates article 1283 of the said Civil Code, because the creterion of construction which animates the same, establishes in the contract certain facts, which are different from those which the parties to the contract intended to stipulate, and did stipulate. It also violates article 1284, because there is nothing so unreasonable as to suppose that Juan Serralles y Colon should have intended to contract the obligation of paying for a thing purchased, a price greatly superior to the value

which he admitted it really had. It also violotes article 1289, because there is nothing so contrary to the reciprocity of interests of both contracting parties, as to increase, for the benefit of the vendor, the price of the thing sold, by seven thousand, two hundred dollars, while the thing, subject of the contract, has not received any improvement which might justify such creterion of interpretation.

113 5. Violation, by improper application, of articles 1116, 1125, 1261, 1278, and 1285 of the Civil Code.

Article 1116 is incorrectly cited and improperly applied in the judgment in question, because it refers to impossible conditions that do not exist in the contract.

Article 1125 is also improperly cited, because it refers to the certain day on which the fulfillments of obligations may be exacted, and in this case no delay has been incurred in the payment of the amount justly stipulated as the price.

Article 1261 is also incorrectly cited, because the judgment assumes that the obligation contracted by Juan Serralles binds him to pay one hundred cents of the American money for one hundred centavos (cents) of the Porto Rican currency.

Article 1278 is also improperly cited, for the same reason as article 1261.

And article 1285 is also improperly applied, because if, as therein provided, the clauses of a contract must be construed in relation to one another, it is a serious error to hold that eighteen thousand

114 pesos Porto Rican money should be paid with eighteen thousand dollars of the United States money, which are equivalent to thirty thousand pesos of the money in which the price was fixed, and especially when in the same clauses of both deeds,—that of September first, 1894, and that of October 6th, 1894,—the price of the sale is stipulated at eighteen thousand pesos Porto Rican currency.

Paragraph 7 of article 1690 of the Law of Civil Procedure.

6. The foregoing errors of law have caused the error in the consideration of the documents which, in the nature of evidence, were presented by the parties, since the court upon considering the same, prescinded from the legislation in force with regard to the point at issue, which is the organic act of the 12th of April, 1900.

115 By reason of the aforesaid, *I pray the court*, to consider all the requisites of procedure as complied with, and the appeal in cassation for violation of law, as perfected in these proceedings, and to be pleased to quash and annul the judgment of the district court of Ponce, in this suit, and to dismiss the plaintiff's action, declaring that the eighteen thousand pesos, the price stipulated in the contract of sale made by Jose Nicolas de Cartagena and Juan Serralles y Colon, and in consequence the portion of the same which is claimed by the plaintiff, should be paid in money of the United States currency, which is in circulation at present in Porto Rico, at

the established legal rate of sixty cents of the present currency in the island, for each one peso, or one hundred centavos of the "special currency," which was in circulation in the country previous to the exchange for the American money; the costs of the suit to be paid by the opposing party.

San Juan, Porto Rico, January 27th, 1902.

(Signed) JOSE DE GUZMAN BENITEZ, *Counsel.*

116 To the Supreme Court:

I, Herminio Diaz Navarro, counsel for Belen Esbri y Rubert, appear in the declara*roty* proceedings which she has instituted against the heirs of Juan Serralles y Colon, for the collection of interest (rentas) in American money, and state: That, in compliance with the course of judicial process in this case, and as precedents, and for the sake of the better knowledge of the question at issue in this controversy, I will set forth the following facts:

Facts.

I.

Jose Nicolas Cartagena was the owner in fee simple of a share *pro indiviso* in the sugar plantation known as "Ursula," representing eighteen per cent. of the eighty thousand pesos total value of the estate, which share he sold to Juan Serralles for eighteen
117 thousand pesos, commercial money, payable in the following manner: 2000 pesos, on the 15th day of July, 1898; 2000 pesos, on the same day and month of the year 1899; 2000 pesos, on the 15th day of July 1900, and 3000 pesos, on the 15th day of July of the years 1901 to 1904, both inclusive, all of money current in the commerce, whatever may be the coinage of the money that, with such character, be in circulation or is accepted in this province, at the rate of one hundred centavos (cents) of the money in circulation for each peso, the said instalments earning interest at the rate of ten per cent. per annum, from the date of the contract, the said interest to be paid quarterly when due. Deed executed in the city of Ponce, before the notary Rafael Leon y Paz, on the first of September, 1894, an attested copy of which is to be found on folio 38.

II.

As a rectification of the former deed, the said Jose Nicolas
118 Cartagena declared in a deed of a later date, that, to himself and to his children Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena, belonged the said share, in the proportion of 12.133 pesos 33⅓ cents to the former, and 5.876 pesos 63⅔ cents to the latter, and with the proper judicial authoriza-

tion *with regard to the sale of the portion belonging to the children*, he ratified the sale to the said Serralles, who bound himself to pay to the said Cartagena 2000 pesos, on the 15th of July, 1898, 1899, and 1900; 3000 pesos, on the same day of the years 1901 and 1902; and 133 pesos and $\frac{1}{3}$, on the same day of the year 1903, *binding himself* to pay the 5876 pesos 66$\frac{2}{3}$ cents, to be divided among the four children, *in equal shares, at the rate of 2866 pesos, 66$\frac{2}{3}$ cents, on the* 15th of July, 1903, and 3000 pesos, on the same day of the year 1904, all these payments to be made in money current in the commerce, of whatever coinage the money may be that, with such character, be circulating or accepted in this province, at the rate of one hundred cents (centavos) of the money in circulation for each one peso.—Deed of the 16th of October, 1894, an authentic copy of which is found on folio 47.

119 III.

Jose Nicolas Cartagena having died, there was ajudicated, in the division of the estate left by him, to the widow of Belen Esbri y Roubert, among other properties, a share of one thousand one hundred and sixty-five pesos in the obligation referred to in the preceding paragraphs, and in the following instalments: 1031 pesos 66 cents (centavos); $\frac{2}{3}$ of the instalment due the 15th of July, 1902, and 133 pesos 33$\frac{1}{3}$ cents, amount of the instalment due on the 15th of July, 1903, making up a total of 1.165 pesos.—Attested instrument on folio 1.

IV.

A quarterly instalment of the income (rentas), which Mrs.
120 Esbri should have received of the portion adjudicated to her, having become due on the 15th of September, 1900, the heirs of Serralles wanted to pay her with the discount with which the exchange of the "provincial money" for American money was made, and Mrs. Esbri having sued the said heirs in the municipal court of Ponce, judgment was rendered against the latter, under date of December 7th, 1900, adjudging that the payment should be made at par in the money in circulation, without discount of any kind, which judgment was sustained, on appeal, by the district court, in the judgment of the 19th of January, 1901, a certified copy of which is found on folio 64, the defendant heirs having respected the decision, and paid as adjudged by the court.

V.

Afterwards, when two more quarterly instalments had become due, the heirs of Serralles again refused to pay without discount,
and after the action which I prosecute, had been instituted,
121 it was carried on through all its stages, and judgment was rendered by the district court of Ponce, under date of Sep-

tember 17th, 1901, by which the heirs of Serralles were again condemned to effect the payment at par.

VI.

From this judgment, the counsel Jose de Guzman Benitez, in the name of the said heirs, took an appeal in cassation for violation of law, based on paragraphs 1 and 7 of article 1690 of the Law of Civil Procedure, and following the judicial course in the case, I pray that the same be dismissed, the costs to be paid by the appellants, on the following grounds:

1. The trial court taking into consideration that in the deed of the first of September, 1894, an authentic copy of which is to be found on folio 38, as well as in the deed of the 16th of October, 1894, whereby the former deed was rectified, and an authentic copy
122 of which is found on folio 47, the contracting parties appear to have agreed in the first deed, and ratified in the second, that the price of the sale payable in instalments should be paid in money current in commerce, of whatever coinage the money might be, that, with such character, be in circulation or accepted in this province, at the rate of one hundred cents (centavos) of the money in circulation for each one peso owed; and the trial court, not losing sight of the fact that in the judgment rendered against the said heirs of Serralles, under date of January 19th, 1901, a certified copy of which is found on folio 64, the question which was then raised by the plaintiff, in the same manner as now, was then resolved and set forth in the said judgment, and that, therefore, the case had the merits of a *res judicata*, and the said judgment was executory; the trial court, which could not find in the testimony of the witnesses for the plaintiff, any statement contradicting what is set forth categorically in the said deeds, what is adjudged in the said judgment, and what was consented to by the heirs of Serralles, who respected the said judgment and paid them at par, and who now go against their own acts,—the trial court, I say, declares as proven in the judgment from which appeal
123 is taken, that the pesos, which the said heirs of Serralles owe to Mrs. Esbri, are dollars and not provincial pesos.

Now then, it is a doctrine established by the supreme court, among others, in the judgments of the 31st of March, 17th of May, 25th of June, and the 6th and 10th of September, 1900, and the 25th of April, 1901, agreeing with those of the supreme court of Spain of the 1st of March, 1886, 23rd of June, 10th and 27th of October, 1888, 10th of December, 1894, and the 30th of October, 1896, that when an appeal in cassation for violation of law, is based on number 7 of article 1690 of the law of civil procedure, it must be precisely stated whether the error which is supposed to have been committed in the consideration of the evidence, is one of fact or of law, or of both, citing, in the former case, exclusively the document or authentic act in which the error appears, and, in the latter case, the law or legal doctrine relative to the value of evidence, which is supposed

to have been violated. The heirs of Serralles, on taking their appeal, have not borne in mind that doctrine in any manner whatever. All that they observe upon considering the ground in paragraph 7 of article 1690 of the law of civil procedure, is that the sup-
124 posed violations of law, indicated in the appeal, have led to an error—without indicating which it is—in the consideration of the documents, which, as evidence, were presented by the litigants: the court upon proceeding to consider the same, prescinding from the legislation in force on the point at issue, which is the organic act of the 12th of April, 1900. And this being so, this court should admit what the trial court declares proven, and the appeal so far as it is based on paragraph 7 of article 1690 of the law of civil procedure, should be dismissed for the reason that the appellant has not presented, expressly on that point, the question that he wished to debate.

2. And it is clear, taking into consideration what has been stated, that, as there is no sound basis, the violations of law alleged by the appellant, have no solidity.

In the first place is alleged the violation of articles 1091, 1256, and 1258 of the Civil Code, which establish as the supreme law in all contracts, that which has been agreed to by the parties to the contract, and do not permit that the validity and performance thereof be left to the free will of one of the contracting parties, both contracting parties being obligated to comply with what has been expressly
125 agreed to, from the moment that by mutual consent the contract is perfected.

The violation is based on the ground that,—according to the appellant,—the price of the share conveyed was fixed at eighteen thousand pesos, of the money current on the date of the contract; and in order to prevent the consequences of the exchange of the money for the provincial currency already announced, the necessary provision was made so that the said amount should not be diminished, or be subject to the discount of five per cent., which was basis of the exchange.

This is what the heirs of Serralles say, was agreed to; but, aside from the contradiction that appears to us when it is asserted that it was agreed that the price should not be increased nor diminished, and again, that, in order that the eighteen thousand Mexican pesos should not suffer any diminution in their value, it was agreed that if the exchange came, the Mexican pesos should be paid at par in provincial pesos, which had a higher value; aside from that, the trial court affirms that what is said by the heirs of Serralles, is not what was agreed upon, but that on the date the instalments became due, the pesos of the money current on the date of the con-
126 tract, should be paid in pesos of the money current on the day of their payment, at the rate of one hundred cents of the money in circulation for each peso, and, as that declaration is final, because that part of the appeal which refers to it, cannot be successfully sustained, as we have shown already, we find that the trial

court, far from committing a violation, has absolutely respected the law of the contract and the will of the parties to the contract, not leaving it to the free will of the — plaintiffs, to comply with it as they please.

4. The same path which was pursued by the aforesaid violation, is followed by the violation which, in the second place, is indicated in the appeal *i. e.* that of articles 1445, 1449, and 1500 of the Civil Code, which articles define what is understood by a contract of purchase and sale, and prohibit that the determination of the price, consideration thereof, be left to the free and uncontrolled will of one of the parties to the contract, and which impose on the purchaser, the obligation of paying the price at the time and place fixed in the contract.

Those violations do not exist.

The court has respected, in its judgment, what it declared to have been proved as having been agreed to by the parties respect-
127 ing the payment of the aleatory price given to the thing sold. It orders the heirs of Serralles to respect this agreement, and nothing more.

4. As to the violation which, in the third place is alleged, of section 11 of the organic act, of the 12th of April, 1900, known as the Foraker law, such allegation is extremely strange.

In the preceding paragraphs of the writing of appeal, the law governing contracts is invoked, and immediately after, the appellant, without great efforts, jumps over that august law and tells us that the trial court has violated the above mentioned legal precept, which is absolute and imperative, when it decreed that a debt contracted in a different kind of money, and pending on the date of the promulgation of said law, should be paid at par in the new money without the discount provided in the said statute.

And at this point the complaining and appealing heirs should be asked: Is the contract law which you invoke, when you allege that articles 1091, 1256, 1258, 1445, and 1500, of the Civil Code have been violated, supreme or not? or is that law subordinate to
128 section 11 of the Foraker bill, to which, like a man wrecked in the sea, you cling in the shipwreck of your pretensions, ascribing to it, not the character of a democratic law, which above all things respects private rights, but the character of a despotic ukase, to which even life must be sacrificed?

Section 11 of the Foraker bill did not repeal, neither expressly nor by implication, nor could it repeal the proclamation of the President of the United States of the 20th of January, 1899, published in this island, in the official gazette of the 5th of February of the same year, and to which reference is made in a judicial order issued by the secretary of justice on the 25th of February, 1899, in which proclamation, as well as in section 11 of the Foraker bill, it is provided that pending debts shall be paid in the money of Porto Rico, in circulation, or in money of the United States, at the rate

of exchange, but leaving in full force any agreement made by the parties.

And the said proclamation was not repealed, either expressly or by implication, by the Foraker bill, because the Foraker bill did not expressly provide that the proclamation should have no effect, nor did it provide anything contrary to its provisions, limit-
129 ing itself to establishing in an imperative manner, that payments shouid be made in the equivalence there where a contract did not exist, but tacitly leaving in force, by remaining absolutely silent on the subject, what had been provided in the said proclamation regarding cases where a contract existed.

And it had to be so; and neither Mr. Foraker, when he submitted the law, nor the Congress of the United States, when it passed the same, could have had the intention that the precept in section 11 should comprise in its imperative language, any contract, repealing agreements that had been sanctioned by the proclamation of the President, for that would have been unconstitutional, since Foraker, as well as Congress, had, on that point, to respect article VIII of the treaty of Paris, of December 10th, 1898, wherein, when Spain relinquished in Cuba and Porto Rico what was hers, she made it expressly appear that such relinquishment or cession would not affect that which did not belong to her, and which, therefore, she could not relinquish or cede, such as private property, and the rights which, according to the law, belonged to the peaceful possessor of the same.

Section 11 of the Foraker law has therefore not been violated by the trial court, when it abided, as it did, by the law govern-
130 ing the agreement which it declared proven to have been made, which law was left in force by the aforesaid proclamation, which had not been repealed by the Foraker bill.

5. Articles 1281, 1283, 1284, and 1289, of the Civil Code, refer to the manner in which contracts should be interpreted.

These articles are also claimed by the appellant, to have been violated, and it is just here that the obstinacy shown in the appeal is most apparent, and where the rigorous justice of the judgment appealed from, is most evident.

If the terms of a contract,—says article 1281,—are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its clauses shall be observed, and if the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

The clause of the contract in question, which has given ground for this litigation, is perfectly clear. The pesos to be paid in instalments,—the clause reads,—shall be paid in pesos of the money current on the day of the payment, at the rate of one hun-
131 dred cents (centavos) for each peso of those in circulation on the day of the payment. The trial court yielded to the clearness of expression of those words. The appellant asserts that the intention of the contracting parties was a different one. Very well,

but that has to be proved, and the court *a quo*, after weighing the evidence, has declared that the above was the intention, and such a criterion must be respected, because the appeal, as we have already said, having been taken contrary to form, must be dismissed as to that point. The same as article 1281, articles 1283, 1284, and 1289 have been respected, alike in their spirit and in their letter:—Because the trial court has not included in its precise and concrete terms—which are so concrete and precise as to leave no room for doubts—things and cases different from that with regard to which the persons interested intended to contract. Because the clause of the contract could not be interpreted except by giving it its just meaning, and in this manner it has been construed. And because in this case, has not existed, there does not exist, nor could there exist the impossibility referred to in article 1289, and the doubts that appear to the appellant and to the judge who dissented, do not refer to incidental
132 circumstances, but to the principal object, the essence of the contract, the subject matter of the contract, which is the subject of the controversy, and, therefore, it is not possible to apply to the case the rule established in the said article. On the other hand,—and here, as we have already said, is where the obstinacy shown in the appeal, and the rigorous justice of the judgment appear most evident,—if the clause in question were not absolutely clear, if it were doubtful, if the letter of the same should admit of different construction, the trial court has acted wisely when it judged of the intention of the contracting parties, by adhering to the provisions of article 1282 of the Civil Code, that is, judging of the said intention from the acts of the contracting parties subsequent to the contract, such as the complaint formulated by my client against the heirs of Serralles, in the municipal court of Ponce, and the payment at par, made by the said heirs by virtue of the judgment of the said court, which was affirmed by the decision of the district court of the 19th of January, 1901, mentioned in the fourth fact of this writing.

And we now come—in the list of violations cited by the ap-
133 pellant in his appeal,—to those of articles 1116, 1125, 1261, 1278, and 1285 of the Civil Code. And in these, the appellant is as wrong as in the former, if not more so; and as it is sufficient to read the grounds assigned by him for the alleged violation of these articles, in order to satisfy one's self of the inadequacy of his assertion, I will not undertake to refute them minutely and carefully.

And I, therefore, most respectfully pray the court, to order that this writing be annexed to the proceedings, and, considering that the judicial course of procedure has been performed, to dismiss the appeal in cassation referred to, and to impose upon the appellants all the costs caused and those that may be caused.

San Juan, April 23rd, 1902.

(Signed) HERMINIO DIAZ.

This writing has been presented this 25th day of April, at 11 o'clock in the morning.

(Signed) CASTRO.

The 26th of April, I reported the same to the court, to which I certify.

(Signed) CASTRO.

134 *Judgment of the Supreme Court.*

Judgment.—In the city of San Juan Bautista de Puerto Rico, the 28th of June, 1902, in the proceedings in the "declaratory action" of greater import, prosecuted in the district court of Ponce, by Belen Esbri y Roubert, widow of Cartagena, against the heirs of Juan Serralles y Colon, represented by Eduardo Wellenkamp y Chelva, relative to the recovery of a certain amount, and the performance of a contract;—which proceedings are pending before us, by virtue of an appeal in cassation for violation of law, taken by the attorney of the said heirs (defendants), which representation and defense before this supreme court, have been in charge of the attorney Don Jose de Guzman Benitez, the counsel for the complainants being the attorney Don Herminio Diaz Navarro:

Finding that, by a public deed executed in the city of Ponce, before the notary of said city, Don Joaquin Mayoral,—then in charge of the protocol of Don Rafael Leon, a notary of the same class, who was away on leave of absence,—on the 1st of September, 1894, Don Jose Nicolas de Cartagena y Mangual sold to Don Juan Ser-
135 ralles y Colon, who was represented in the act of executing the deed, by his manager and general representative, Don Eduardo Wellenkamp y Chelva, his share in the sugar plantation "Ursula," situated in the "Cintrona" ward, municipality of Juana Diaz, for the price and amount of 18,000 pesos, commercial money, to be paid in instalments, as provided in clause 2 of the said deed, that is, 2000 pesos, on the 15th of July, 1898; 2000 pesos, on the 15th of July, 1899; 2000 pesos, on the 15th of July 1900, and 3000 pesos on the 15th of July of the years 1901 to 1904, both inclusive, all of which instalments were to be paid in money current in commerce, of whatever coinage the money might be, which, with such character, be circulating or accepted in this province, at the rate of one hundred cents of the current money for each peso, excluding all kinds of paper money issued, or to be issued, even if its circulation should be compulsory, which instalments were to bear interest at the rate of 10 % per annum, from the date of the execution of the deed, being payable quarterly after due, the share sold remaining mortgaged, to guarantee the instalments and interests agreed upon; the parties to the contract, declaring in clause 7 that the price for which the sale was made, was the just and true present value
136 (on the date of the deed) of the share sold; and in clause 8, it was also declared by the contracting parties, for the pur-

poses of article 127 of the mortgage law, that the price of the share mortgaged was 18,000 pesos, current money, renouncing the right to a new valuation, or to any action to that end; it being well understood that the above price was to serve as a basis for the sale at auction to be held, in case the instalments should not be paid, and a judicial action should have to be entered to secure their payment.

Finding that an error had been committed by Jose Nicolas de Cartagena in selling his share in the plantation "Ursula," by the deed in question, as belonging to him exclusively, whereas, since it had been acquired during his marriage with his first wife Doña Clorinda Perez y Quiñones, it must be considered as pertaining to the conjugal partnership with his first wife, and, consequently, as the property of the vender, Cartagena, and of his minor children Jose Nicolas, Maria Mercedes, Genaro, and Jose Rafael del Carmen Cartagena y Perez, born in wedlock with his deceased wife already mentioned; the said error having been corrected by means of the proper judicial division (juicio divisorio), whereby the sum of 12,133 pesos and 33⅓ cents was adjudicated to Don Jose
137 Nicolas Cartagena y Mangual, as his portion of the share referred to; and the balance of 5,866 pesos and 66⅔ cents (to complete the 18,000 pesos at which said property had been appraised), to his four children, the said Jose Nicolas, Maria Mercedes, Genaro and Jose Rafael del Carmen Cartagena y Perez; and the said Don Jose Nicolas de Cartagena y Mangual, wishing to close the contract of purchase and sale previously made with Don Juan Serralles y Colon, of the said share in the "Ursula" plantation, (for which act he had requested and obtained the proper judicial authorization, in so far as the said sale affected his said minor children), by a deed dated the 6th of October, 1894, executed also in Ponce, before the said notary Joaquin Mayoral, the said Cartagena, in his own behalf and in representation of his said minor children, ratified the above mentioned deed of the first of September, last, and again sold to Juan Serralles y Colon, the shares which belonged to him and his children, in the proportion of 18% of the total value of the "Ursula" plantation, aggregating 18,000 pesos current money, of which the sum of 12,133 pesos and 33⅓ cents, the share of Don Jose Nicolas de Cartagena, was to be collected by him, at the rate of 2,000 pesos, on the 15th of July of the years 1898, 1899, and 1900; and 3000 pesos, on the
138 15th of July, 1901; 3000 pesos on the 15th of July, 1902; and the balance of 133 pesos and 33⅓ cents, on the 15th of July, 1903; and the minors Jose Nicolas, Maria Mercedes, Genaro and Jose Rafael del Carmen Cartagena y Perez, were to collect the 5866 pesos and 66⅔ cents belonging to them, and which sum was to be divided among them in equal shares, at the rate of 2866 pesos 66⅔ cents, on the 15th of July, 1903, and 3000 pesos, on the 15th of July, 1904, as provided in the 3rd clause of the said deed, wherein it is also provided, as in the former deed, "that all the said pay-

ments shall be made in money current in the commerce, of whatever coinage the money may be, which, with such character, be circulating or accepted in this province, at the rate of one hundred cents of the current money for each peso, excluding all kind of paper money issued or to be issued, although its circulation be compulsory;" the said instalments bearing interest at the rate of ten per cent. per annum from the 23rd of June last, payable quarterly when due; and the sold share in the said plantation "Ursula," remaining, besides, mortgaged to guarantee the payment of the principal and of the interest stipulated, including all the
139 other clauses and conditions provided for in the former deed, which are literally reproduced, the said instrument having been registered in the register of property of the city of Ponce, on the 6th of April of the following year.

Finding, that the death of Don Jose Nicolas de Cartagena y Mangual having taken place subsequently, and the division and allotment of his estate having been effected, the amount of 1365 pesos was adjudged in usufruct, during her life, to the second wife of the said Cartagena, Doña Belen Esbri y Rubert, of which sum 200 pesos from the proceeds of the personal property of the deceased, and the balance of 1165 pesos, as part of the instalments guaranteed by the mortgage, in behalf of her deceased husband, were to be paid by Don Juan Serralles y Colon, in the following manner: 1031 pesos and 66⅔ cents were to be paid out of the instalment due on the 15th of July, 1902; and 133 pesos and 33⅓ cents were to be paid from the instalment due on the 15th of July, 1903; and that, when the said Belen Esbri y Roubert demanded of Eduardo Wellenkamp y Chelva, attorney of the heirs of the said Serralles, now deceased, the interest for the quarter due on the 15th of September, 1900, on the instalments adjudged to her, which interest amounted to 29
140 pesos 12 cents American money, without discount as per clause 2 of the deed of purchase and sale of the 4th of September. 1894, the said Wellenkamp refused to pay the said sum without the established discount; and then the said Doña Belen Esbri y Roubert sued the said Wellenkamp in the municipal court of Ponce, which court sentenced the said Wellenkamp to the payment of the amount claimed, in the American money in circulation, without any discount, by reason of the difference of the money; and an appeal having been taken by the representative of the heirs (defendants), the district court of the said city, under date of January 19th, of the following year, affirmed the judgment of the municipal court by majority of votes, ordering the costs in both actions to be paid by the appellant.

Finding, that on the 17th of April of last year, the attorney Libertad Torres Grau, on behalf of Doña Belen Esbri y Roubert, entered an action, (origin of this suit) in the district court of Ponce, against the heirs of Don Juan Serralles y Colon, wherein reference was made to some of the incidents herein recited, and in which it was also stated that after the defendant Eduardo Wellenkamp had

been notified in the capacity with which he appeared in the action,
of the executory judgment rendered by the said district
141 court, he was later on required to pay, and finally paid, the
amount claimed for the three months, in American money; and that, when the next two quarters had already become due, that is, the quarter due on the 15th of December, 1900, and the quarter due on the 15th of March of the following year, the said Eduardo Wellenkamp, upon being required to effect the payment of the same, in his capacity as representative of the heirs of said Serralles y Colon, flatly refused to pay them, saying that the interest due as well as all future interest and the principal, would be paid by him, in the equivalence of the provincial money, and not in the money current in the commerce at the rate of 100 cents for each peso of the said money, notwithstanding the agreement made by the contracting parties, and the decision rendered by the district court in its executory judgment, to which the plaintiff referred, without any attention being paid to the friendly representations and efforts made by her, for which reason the plaintiff, invoking on her behalf the legal provisions which she though pertinent, concluded by requesting the court to admit the said action as "declaratory action of
greater import," and that the heirs of said Juan Serralles y
142 Colon, represented by Eduardo Wellenkamp y Chelva, be
notified to that effect, in order that they might appear to answer the said suit, and that the court declare, in due time, that the heirs, by virtue of the positive agreement set forth in the second clause of the deed of purchase and sale, executed on October 6th, 1894, by Juan Serralles y Colon and Nicolas Cartagena y Mangual, were bound to pay Doña Belen Esbri y Roubert, the revenues due up to the date on which the action was instituted, in American gold, the money in circulation in the commerce of this island; and in due time, the revenues that were falling due, as well as her share in the instalments due in 1902 and 1903, which pertained to those stipulated in the deed in question, and which share was adjudged to her in the division of the estate of her deceased husband, to be also paid in money current in the commerce, of whatever coinage the money might be, which, with such character, be circulating or accepted in this island, at the rate of 100 cents of the money in circulation for each peso; as well as the lawful interest on the revenues due and not paid, and the costs of the trial, the said action being signed by lawyer Rafael Toro Vendrell, in the name of his colleague.

Finding, that, the heirs of said Don Juan Serralles y Colon having been notified of the said action, and Don Eduardo
143 Wellenkamp y Chelva having been summoned in his capacity
as representative of the said heirs, the said Wellenkamp put in an appearance in the case through the lawyer Julio M. Padilla, alleging the dilatory exceptions of lack of personality on the part of the representatives of the plaintiff, because the action had not been authenticated by the signature of the attorney for the plaintiff,

but by that of somebody else, who had signed the writing in his name, for which substitution he was not authorized; and the lack of personality on the part of the defendant, the said Mr. Wellenkamp lacking the representative capacity that was ascribed to him since, although he was the attorney of Doña Mercedes Perez, widow of Don Juan Serralles y Colon, for herself and in representation of her minor children, Juan Eugenio and Julia Serralles, these children having attained their legal age, he had no authority to represent them in the suit; and the said Wellenkamp stated besides, with regard to the merits of the complaint, among other things, that the heirs of Juan Serralles y Colon had never refused to pay the equivalent; that the deed dated October 6th, 1894, was not the original contract, as it had been executed to ratify the deed of the first of September, of the same year; that in both deeds the
144 clause in question reads: "that all the payments should be made in money current in the commerce, of whatever coinage the money might be, which with such character might be circulating or be accepted in this province, at the rate of 100 cents of the money in circulation for each peso, excluding, etc." that on the 6th of October, 1894, when the second contract was executed, wherein the said clause was inserted, the currency in circulation in the island was the Mexican money, the retirement and exchange of which had already been officially announced; that it is a fact that the budget law of the 6th of August, 1893, for the year 1893–1894, authorized the substitution of the Mexican silver by the Spanish silver; that the royal decree of the 17th of August, 1895, created a provisional paper money for the purpose of the retirement and substitution of the said money; that another decree of the same date, authorized the making of the contracts (without bids) necessary for the purpose of carrying out the said measure (the exchange of the money); that the royal orders of the same date, of the 11th of September, 28th of October, and the 28th of November, contained several provisions for the preparation and carrying out of the retirement and exchange of said money; that the royal decree of the 6th of December, declared the Mexican pesos without value,
145 and created, in their place, the special peso of Spanish coinage; that the government of Porto Rico under date of March 20th, 1896, ordered the retirement from circulation of the Spanish currency which was formerly in circulation, and that in the same year the exchange of the Mexican money was also completed; that the heirs of Serralles had paid Doña Belen Esbri in provincial money without discount, up to the 15th of July, 1900, the revenues due in Mexican money; that this island was a Spanish province up to the 11th of April, 1899, when it was ceded to the American Government, which has constituted it a body politic of a different character, under the name of "The People of Porto Rico," by the act of Congress approved on the 12th of April, 1900; that the 31st of July of the same year, the special currency was definitely retired from circulation and exchanged for the American money, at the rate of

60 cents American money for 100 cents of the special currency; and that clause- 3 and 8 of the deed of the 6th of October, 1894, and the corresponding clauses 7 and 8 of the deed of the first of September, of the same year, determine the just value of the estate, and its valuation in case of its sale at auction, at 18,000 pesos money current at the time; and inferring from all these antecedents, the
146 legal considerations that he thought pertinent, the counsel for Mr. Wellenkamp concluded by requesting that notice be taken of his appearance in due time and form, on behalf of the said Wellenkamp, and that, the exceptions of lack of personality on the part of the representative of the complainant, and on the part of the defendant, having been taken, the action be considered as answered; and that the court, on rendering judgment, declare the said exceptions to be well taken and dismiss the claim definitely, imposing upon the plaintiff perpetual silence and all the costs.

Finding, that when the court proceeded to hear the evidence, and admitted the proofs offered by the parties, among which were documents, the testimony of witnesses, and presumptive evidence, there was attached to the proceedings, the original expediente (record) in the "oral action" entered in the municipal court of Ponce, by Doña Belen Esbri y Roubert against the heirs of Juan Serralles, for the collection of 29 pesos, twelve cents, as quarterly interest on the 1165 pesos of the mortgage credit belonging to her on the share in the "Ursula" plantation, which had been sold to the deceased Serralles by the deceased husband of the plaintiff, Jose Nicolas de Cartagena y Mangual, and the two deeds of the 1st of September and
147 the 6th of October of the year 1894, origin of the mortgage credit in question.

Finding, that the case having been brought to a hearing, and the dilatory exceptions alleged by the counsel for Eduardo Wellenkamp of lack of personality on the part of the attorney for the plaintiff, and of the defendant, because of his want of the capacity in which he had been sued, having been disallowed—against which resolutions the counsel for Mr. Wellenkamp, filed a protest, which was recorded for the purpose of the appeal in cassation—the trial was proceeded with in regard to the principal question, and the testimony of the Mr. Guillermo Schuck, Mr. Francisco Paracini, and Mr. Antonio Catinchi, (the former two being merchants, and the latter a commercial agent, and all of them of age) was taken; of whom the first one declared, when questioned by the counsel for Mr. Wellenkamp, that he knew that the transactions made in commerce on instruments similar to the instrument origin of this suit, had all been made on the basis of equivalent values; and when questioned by the counsel for the opposing party, he replied that he did not know in what form the transactions had been made, which were based on instruments wherein the clause, which was the subject of the
148 discussion in the present case, had been inserted; the second witness declared that the transactions effected in commerce, had been made on the basis of an equivalent value, and that the

documents in his possession, did not contain the clause referred to; and the third witness declared that the transactions based on instruments in which he had intervened, and which contained clauses resembling the one under discussion, although they were not so concrete, had been made on the basis of an equivalent value.

Finding, that the hearing having terminated, the district court of Ponce rendered judgment by a majority of votes, on the seventeenth of September of last year, declaring the action to be well taken, and declaring besides, that the heirs of Juan Serralles y Colon were bound to pay to Doña Belen Esbri y Roubert, widow of Don Nicolas Cartagena y Mangual, the revenues due up to date, arising from the contract of purchase and sale made between Cartagena and Serralles, on the 6th of October, 1894, in American money, which was the money in circulation in the commerce of this island; and that in due time the revenues becoming due, as well as the share in the instalments belonging to her, by virtue of the said contract,
149 becoming due in the years 1902 and 1903, and which were adjudged to her in the division of the estate left by her deceased husband Mr. Cartagena, should be paid in money current in the commerce, of whatever coinage the money might be, which, with such character, be circulating or accepted in this island, at the rate of 100 cents of the money in circulation for each peso; and sentencing, besides, the heirs of said Serralles, (defendants) to the payment of the interest on the revenues due and unpaid, and to the payment of costs.

Finding, that, an explanation of this judgment having been asked by the counsel for Eduardo Wellenkamp, in order that it be determined whether the obligation declared in the said judgment, was to pay one American dollar for each provincial or Mexican peso, or whether the payment should be made in the former money, at the official rate of discount, and the court having declared by an order of the thirteenth of November, of the same year, that there was no need of the explanation applied for, since in the judgment above referred to, it was clearly expressed that the heirs of Serralles were to pay to Doña Belen Esbri the revenues and interest thereon due and becoming due, in American dollars, without discount of any kind with reference to the former money, which
150 was in circulation at the time the deed was executed, an appeal in cassation was taken by the counsel in behalf of Mr. Eduardo Wellenkamp, from the judgment in question, for error in procedure and violation of law, simultaneously, which was admitted; and the records having been forwarded to this supreme court, and the parties having been summoned, the same appeared in court, and then the records were turned over to the counsel for the appellant, who returned them, desisting from the appeal for error in procedure, and perfecting the appeal for violation of law, as comprised in paragraphs 1 and 7 of article 1690 of the Law of Civil Procedure, and alleging the following grounds for the same: 1. Infraction of articles 1091, 1256 and 1268 of the Civil Code. The

literal context of the second and third clauses, respectively, of the deed of the first of September and the sixth of October of the year 1894, shows most evidently that the will of the parties to the contract, Messrs. Cartagena and Serralles, was to fix the value of the share sold by the former to the latter, at 18,000 pesos, of the money current in the island at the date *of* the contract was made. This was the chief basis of the contract. Approaching as the exchange of the Mexican money for the special money was at that time, it was logical to foresee in the said contract the loss of
151 five per cent. to which the former currency was subject. And, consequently, the necessary stipulations were made in order that the amount of the price might not decrease, which price must necessarily be 18,000 pesos of the commercial money current in September, 1894, and never less nor more. The judgment, therefore, infringes articles 1091, 1256, and 1258 of the Civil Code, which determine the strict extent of obligations and contracts, according to the terms fixed by the parties to the contract.—2—Infraction of articles 1445, 1449, and 1500 of the Civil Code. One of the essential requisites of the contract of purchase and sale is that the price be certain, the fixing of which cannot be left to the free and uncontrolled will of one of the parties to the contract, the purchaser being obliged to pay the price agreed upon, as provided in the articles already referred to. The judgment from which appeal is taken, substantially changes the value of the thing sold, giving it a value which exceeds by more than one third the true value of 18,000 pesos, of the money then circulating in the island, and which was the value agreed to by the purchaser and the vendor, for the commercial pesos current at that time, had a value, with its 100 cents, equal to 60 cents of the American money now in circulation.—So that, while
152 the real, intrinsic, commercial and even legal value of the 18,000 pesos, of the Porto Rican currency, in its equivalent in American gold, is only 10,800 dollars, the judgment of the district court of Ponce increases it capriciously by 7,200, to the great prejudice of the purchaser, and thus infringes the legal precepts providing for the certainty of the price in a contract of purchase and sale.—3—Infraction of section 11 of the organic act "to provide temporarily revenues and a civil government for the island of Porto Rico, and for other purposes," passed and approved by the Congress of the United States, on April 12th, 1900.—Said section 11 provides in an imperative and absolute manner "that all the debts pending at the time the said law goes into effect, shall be payable in the money of Porto Rico at present in circulation, or in money of the United States, at the rate of 60 cents of coined money of the United States for each peso of the Porto Rican currency."—The infraction of the said law by the judgment of the district court of Ponce, is, therefore, evident.—4—Infraction of articles 1281, 1283, 1284, and 1289 of the Civil Code, which refer to the interpretation of contracts.—The court of Ponce, disregarding the clear terms of the contract of purchase and sale, wherein

the price of the thing sold appears to have been fixed at
153 18,000 pesos of the commercial money current in Porto Rico, in September and October, 1894, enters into consideration as to what the intentions of the parties to the contract were, thus infringing article 1281 of the Civil Code.—The judgment, besides, infringes article 1283 of the same Code, because the criterion of interpretation by which it is informed, establishes conditions in the contract different from those that the parties to the contract, intended to stipulate and did stipulate.—It also infringes article 1284, because there is nothing so improper as to suppose that Don Juan Serralles y Colon should have intended to contract an obligation to pay for the thing bought a price which was by far greater than the value he admitted it really had.—It also infringes article 1289, because there is nothing so much in opposition to the reciprocal interests of both parties to the contract, as to increase, for the benefit of the vendor, the price of the thing sold by 7,200 dollars, while the thing, subject of the contract, has not been improved in any way, which might justify the said criterion of interpretation.—5—Infraction, by improper application, of articles 1116, 1125, 1278, 1261 and 1285 of the Civil Code.—Article 1116 is wrongfully cited and im-
154 properly applied to the judgment in question, because it refers to conditions which are impracticable and which do not exist in the contract.—Article 1125 is also wrongly cited, because it refers to the exact day on which obligations can be exacted, and in this case, there is no delay in the payment of the amount justly stipulated as the price. Article 1261 has also been wrongly cited, and improperly applied, because the judgment assumes that the obligations contracted by Don Juan Serralles, binds him to pay one hundred cents American money for 100 cts. Porto Rican money.—Article 1278 has likewise been wrongly cited, and improperly applied for the same reason as article 1261,—And article 1285 has also been improperly applied, because if, as provided in the same, the clauses of a contract should be construed according to their mutual relation, it is a serious error to decide that an obligation involving 18,000 pesos, Porto Rican money, should be paid with 18,000 dollars of the United States money, which are equivalent to 30,000 pesos of the money in which the price was stipulated, especially as in the same clauses of the two deeds of the 1st of September and the 6th of October, 1894, it is stipulated that the price of the purchase and sale is 18,000 pesos, Porto Rican money; and 6, The preceding errors of law have given rise to the error in the consideration of
155 the documents which, in the nature of proof, were produced by the parties, since the court in considering them, disregarded the law in force on the point at issue, that is, the organic act of the 12th of April, 1900.

Finding that, after the appeal had been prosecuted through all its stages, a day was fixed for the hearing at which act, the counsel for the parties were present and sustained their respective conclu-

sions; examined; the president of the court, Don Jose S. Quiñones y Caro, being the justice "ponente."

Concluding that, according to article 1727 of the Law of Civil Procedure (par. 9), the appeal in cassation for violation of law, is not admissible when it is interposed against the consideration of the evidence by the trial court, unless the case falls within subdivision 7 of article 1690 of the said law; that is, when in the consideration of evidence, the trial court shall have committed an error of fact or of law, in which case, acording to the jurisprudence established by the supreme court of Spain, and constantly followed by this court, it is indispensable that in the petition of appeal it be clearly stated whether the error committed by the court, is of fact or of law, stating, in the former case, the act or authentic document which
156 shows the evident mistake committed by the judge; and in the latter case, the law or legal doctrine relating to the importance or validity of the proofs, which has been infringed; without which requisite the juridic problem, which is submitted to the resolution of the court, cannot be considered as having been properly presented, and it is not proper to admit the appeal.

Concluding that the consideration of the evidence by the trial court, has not been impugned in the form required by law, inasmuch as, — although in the 6th and last ground on which the appeal is based, it is stated that an error has been committed in the consideration of the documents which were produced by the parties, as evidence, since the court in considering the same has disregarded the law in force with respect to the point at issue, that is, the organic act of the 12th of April, 1900—, neither has the nature of the error committed by the trial court been stated, nor, (although it were admitted to be an error of law) has the law or legal doctrine relative to the value or validity of the means of proofs been cited, which has been infringed; for the organic act of the 12th of April, 1900, which as such is mentioned by the appellant, is a *substantive* law, which does not refer, in any manner, to the value and validity of evidence presented in the proceedings, and,
157 therefore, it is not proper to admit the appeal in so far as it is based on subdivision 7 of article 1690, of the Law of Civil Procedure.

Concluding that, the meaning of clause 3 of the deed of purchase and sale of the 6th of October, 1894, having been determined by the trial court, in accordance with its literal sense and the full extent and wide scope of the terms in which it appears worded, as the clear and explicit expression of the will of the parties, the court in condemning, in consequence thereof, the heirs of Juan Serralles to the strict performance of said clause, does not infringe, but on the contrary, strictly apply articles 1091, 1256, and 1258 of the Civil Code, which are cited as infringed in the first ground of the appeal, and which establish the force and efficacy of the obligations, and bind the parties to the fulfilment of the same, with all their consequences; nor has the court infringed articles 1445, 1449, and 1500 of the same

code, which are cited in the second ground for the appeal, and which require, in order that a contract of purchase and sale be perfect, that a fixed price be stipulated, which must be paid by the purchaser at the time and place fixed in the contract, a requisite which has been complied with, by establishing in the contract of purchase
158 and sale in question, as the fixed price of the sale made by Jose Nicolas de Cartagena to Juan Serralles y Colon, of the share belonging to the former and his minor children, in the "Ursula" plantation, the sum of 18,000 pesos of the money, current in the commerce on the date the contract was made, and which cannot be considered as having become ineffectual by the condition established, and mutually accepted by the parties, to regulate the payment of the pending instalments, in accordance with the value of the money circulating at the expiration of the respective periods, that said instalments would become due, which condition although of an aleatory nature, is, nevertheless, perfectly legal and admissible in a contract of purchase and sale, according to the provisions of articles 1115 and 1255 of the same Code.

Concluding, with regard to section 11 of the organic act of the 12th of April, 1900, which, in the third ground of the appeal, is also supposed to have been infringed by the judgment, that although the said section provided that all debts pending at the time when the said law would go into effect, should be payable in the money current in Porto Rico on the said date, or in money of the United States at the rate of exchange established, that is, at the rate of
159 sixty cents, of the legal currency of the United States for each Porto Rican peso, this provision must be understood as being without prejudice to the rights acquired by virtue of previous contracts, wherein the parties should have agreed to a different manner of effecting the payment of their obligations, in consideration of the changes that might take place in the value of the money, the acquisition of which rights took place under the protection of the laws which regulated and governed the same on the date that said contracts were made; for, since it is an indisputable principle of law, and one which has been proclaimed by the American legislation, as well as by the legislation in force in this island, that the laws have no retroactive effect, it cannot have been the intention of the Congress of the United States to annul such contracts which, in order that nothing might be wanting, were also protected by article 8 of the treaty of Paris; and consequently, when, by the judgment from which appeal is taken, the heirs of Serralles were sentenced to effect the payment of the sums of money claimed by the plaintiff, Doña Belen Esbri, in the manner provided in clause 3 of the deed of the 6th of October, 1894, the legal provision above cited has not been infringed, and the appeal cannot be admitted on that ground either.

160 Concluding that the judgment in question does not infringe the rules for the interpretation of contracts either, which rules are contained in articles 1281, 1283, 1284, and 1289 of the Civil Code,

because, the terms in which clause 3 of the contract of purchase and sale of the 6th of October, 1894, appears worded, being clear, and there being no doubt as to the intention of the parties to the contract, the court of Ponce confined itself to applying said clause in its literal meaning precisely as provided in the first of the said articles, the second, that is article 1283, not having been infringed either, for, if the trial court, in view of the documents and other proofs presented, concluded that the will of the parties to the contract, upon executing the deed of purchase and sale of the 6th of October, 1894, was such as appears clearly and definitely expressed in the clauses of the said contract,—against which conclusion it has not been demonstrated in the proper legal manner, that the court has committed an error,—said court, by sentencing the heirs of Serralles to the strict fulfilment of the agreement contained in clause 3 of the deed of the aforesaid date, in accordance with the full scope of the terms in which the said clause is worded, and without limitation of cases, has not
161 infringed article 1283 of the Civil Code, as supposed by the appellant: this case being different from what occurred in the case of Doña Josefa Cayol y Julia, and the agricultural corporation "Balseiro and Gergetti," which case was recently decided by this supreme court, and in which, neither the parties had expressed their will in so clear and explicit a manner as in the present case, nor could the case offer any difficulty, since the plaintiff herself had recognized in her complaint,—and it was also proven in the course of the suit,—that the clause of the deed, the application of which was being considered, and on which she based her claim, that the purchasers Balseiro and Georgetti should pay her the interest on that part of the price, the payment of which had been postponed, in American currency without the discount fixed by the Government of the United States for the money of this country, had been established by the parties in consideration of the exchange of the Mexican money, which had already been announced by the Spanish government on the date when the contract was made, for which reason, this supreme court had to dismiss the appeal in cassation interposed by the plaintiff Doña Josefa Cayol, from the judgment rendered by the district court of Arecibo, denying the claim made by
162 the said Doña Josefa Cayol, the court basing its decision precisely on this same article 1283 of the Civil Code, the application of which is the question at issue in the present appeal.

Concluding that the other rules of interpretation, to which articles 1284, and 1289 of the Civil Code refer, have not been infringed by the judgment, either, since, if by clause 3 of the deed of the 6th of October, 1894, the purchaser, Juan Serralles, bound himself to pay the instalments stipulated at the rate of 100 cents on the current money, of whatever coinage it might be, for each peso of the Mexican money, there is nothing more logical or more proper in the fulfilment of the contract, than that the heirs of Serralles pay now the instalments that are due, to the legal representatives of the vendor,

Jose Nicolas de Cartagena, at the rate of 100 cents, of the American money, which is the current money, for each peso of the Mexican currency; and the instalments and revenues becoming due later on, in the money which may be circulating when they are due, in the same proportion as has been established, in the strict performance of the contract, which is the law governing the contracting parties, and which, being the same for everybody, does not violate
163 the reciprocity of interests which ought to exist between the two parties.

Concluding that the infractions of law which, with more or less propriety have been cited in the judgment, but which do not serve as a basis for the rulings of the same,—such as the articles of the Civil Code, which are cited in the 5th ground of the appeal—are not to be taken into consideration.

Concluding from all that has been set forth, that it is not proper to entertain the appeal on any of the grounds that have been alleged, and which are the only ones that can be considered by this court, according to the precepts of the law of Civil Procedure and general orders number 118, which regulate the exercise of the extraordinary remedy of appeal in cassation from the final judgments rendered by the district courts, in cases of original jurisdiction and in oral and public trials in civil matters.

We adjudge that we ought to declare, and do declare, that the appeal in cassation taken by the representative of the heirs of Don Juan Serralles y Colon, from the aforesaid judgment of the district court of Ponce, is not well taken, and that the costs are to be
164 paid by the appellant. Thus, by this our judgment, which shall be published in the Official Gazette, we pronounce, command and sign it.

JOSE S. QUIÑONES.
JOSE C. HERNANDEZ.
JOSE MARIA FIGUERAS.

LOUIS SULZBACHER, *Dissenting.*
JAMES H. MacLEARY, *Dissenting.*

Publication.

The foregoing judgment was read and published by the chief justice, Don Jose S. Quiñones, the court holding public session this day, to which I, as secretary of the court certify.

San Juan, Porto Rico, June 28th, 1902.

ANTONIO F. CASTRO.

165 *Dissenting Opinion.*

The facts in this case are set out fully in the decision of the majority of the court, and therefore for the purposes of this dissenting opinion it is only necessary to make the following statement: The defendant and appellant, Eduardo Wellenkamp y Chelva, attorney in fact of Don Juan Serralles y Colon, in consideration of certain real estate sold and conveyed to the latter by Nicolas Cartagena y Mangual, did, in the month of October, 1894, in the town of Ponce, make and execute before a notary public and in due form of law a certain document of indebtedness to Nicolas Cartagena, wherein exists the following clause:—"Said sale is made for the sum of 18,000 pesos, commercial money, which shall be paid by the purchaser, Don Juan Serralles y Colon, who is obligated thereto by Don Eduardo Wellenkamp y Chelva, who appears before him (the notary) and to be received by Don Jose Nicolas Cartagena, who is also present, in the following instalments: 2000 pesos on the 15th day of July, 1898; 2000 pesos more on the same day and month of 1899; and equal amount of 2000 pesos on the 15th day of
166 July of the year 1900 and 3000 pesos on every 15th day of July of the years 1901 to 1904, both inclusive; all in current money of commerce, whatever the coinage of money may be, and of such character as may be circulating or be accepted in this province, at the rate of one hundred cents of the circulating money on every peso, and to the exclusion of all kinds of paper money established, or which may be established, although its circulation may be legal tender." The district court of Ponce held, that under the provisions of said contract the defendant, the appellant in this court, is required now to pay American dollars instead of pesos, which were the Spanish silver coin, not only in payment of the amounts due at the time of the filing of the suit, but also in payment of all the amounts thereafter to become due under said contract.—From this decision the defendant appeals to this court.—The majority of the court holds that the defendant's appeal is not well taken; that the writing of his appeal is insufficient and does not set out with clearness and precision the error of the trial court.—The decision is to the effect that the appeal be dismissed.—But nevertheless the court proceeds to give its construction to
167 the contract, accepting the same as was expressed by the district court of Ponce.—Neither in this disposition of the case nor in the construction of the contract am I able to concur. It is contended that the supreme court of Porto Rico is a "court of cassation," and for that reason the Spanish law of procedure and the decisions of the supreme court of Spain should be the rule of decision for this court.—Even were this the case it seems that the defendant's writing of appeal or of cassation is ample to conform to that system of procedure, according to articles 1690 and 1719 re-

ferred to in the majority opinion, and which articles read as follows "Art. 1719.—The paragraph of article 1690 upon which the appeal is based shall be stated in the petition, and the law or legal doctrine alleged to have been violated shall be precisely and clearly cited, as well as the manner in which the violation occurred. If there should be two or more bases or reasons for appeal, they shall be stated in separate and numbered paragraphs."—"Art. 1690.—An appeal for annulment of judgment by reason of violation of law or of legal doctrine shall lie:—1.—When the decision contains a violation, erroneous interpretation, wrongful application of law or of legal doctrine applicable to the case at issue.—2.—When
168 the judgment is not pertinent to the allegations made by the litigants at the proper time.—3.—When the judgment grants more than is prayed for, or does not contain any declaration upon some of the allegations made in the action at the proper time.—4.—When the decision contains contrary rulings.—5.—When the decision disallows a plea of *res judicata*, provided that this exception has been pleaded in the action.—6.—When, by reason of the matter at issue, there has been abuse, excess or defect in the exercise of the jurisdiction, either taking cognizance of a matter which does not come within the jurisdiction of the court or judge, or in not taking cognizance thereof when it is his duty to do so.—7.—If in the consideration of evidence an error of law or fact should have been committed, provided that the latter error is apparent from documents or authentic acts which show the evident error of the judge." Although some of the appellant's objections stated in his writing of appeal could perhaps have been more specific, yet, taking them all together, they are sufficient to place the whole case and the document in controversy before this court for consideration and
169 decision.—I am, however of the opinion that the supreme court of Porto Rico is not a court of cassation, but a court of appeals, and as such has the right to consider the whole case and the merits of the controversy without regard to the technicalities in the manner of its presentation. I arrive at this conclusion by considering the history of the laws now in force here and the origin of this court. After the occupation by the Government of the United States of the island of Porto Rico, and whilst it was under military administration, a number of regulations called "general orders" affecting the judicial system, and legislative in character, were adopted and promulgated and became part of the laws of Porto Rico. General order No. 118 promulgated by Brigadier General George W. Davis, August 16th, 1899, is the one which is to be considered in connection with this case.—By this general order the courts of the island were created, namely, a supreme court, district courts and municipal courts.—Section 2 of said general order reads as follows:—"There shall be a supreme court of justice with fixed residence in the city of San Juan, composed of a chief justice and four associate justices, who jointly will constitute the supreme

bench for all civil and criminal business." The following
170 section of said general order governs appeals from the district courts to the supreme court:—"15.—The criminal business transferred from the abolished courts shall be proceeded with by the district courts.—Matters of civil litigation shall also follow their course up to the step in the procedure known as presentation of the proofs, when they shall be continued under the rules of civil oral suits established by this general order.—If said business shall have got so far as presentation of proofs without concluding same, the remainder shall be heard in oral suit, but if the suit be found in a stage of proceedings subsequent to the presentation of proofs it shall be finished and decided by the district courts in conformity with existing proceedings, after public hearing, it being understood that recourse of cassation against the decision shall only be allowed within the disposition of this general order."—"45.—In all cases provided for by the law of criminal procedure appeal in cassation will lie against sentences pronounced by the district courts for infraction of law or error in procedure."—78 "Appeal to the supreme court will
lie in all civil suits for infraction of law or error in procedure in
171 the cases which the law of civil procedure defines for the latter, but not for suits heard before municipal courts."—"80.—In criminal trials appeal may be taken for infraction of law and error in procedure in cases defined by the law of criminal procedure."—"81.—Notice of appeal shall be given to the sentencing court not later than ten days after the day of notification of sentence."—"82.—The district court shall decide whether to allow the appeal only when such is to be taken for error in procedure and its decision adverse may be appealed against before the supreme court within fifteen days.—For this purpose the district court when denying right of appeal shall grant a literal and certified copy of the ruling against which appeal was sought to the party appealing within three days at the latest, and besides shall order both sides to appear before the supreme court."—"83.—On the termination of the time allowed for appearance and on the appearance of the appellant, the supreme court after public hearing shall immediately give a decision on the appeal against the ruling of the lower court debarring right of cassation.—The lawyers for both sides may be
172 present, and the matter must be decided before all other business in hand." They having been enacted and established by American military authority, and although promulgated in two languages, there can be no doubt but that the English must be held to be the original.—It is evident therefore that in civil matters, at least, the supreme court is a court of appeals and not a court of cassation.—From a different aspect however must the courts and the laws of Porto Rico be viewed and construed after the passage by the Congress of the United States of the organic act of Porto Rico, being entitled: "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12th, 1900, especially in view of the following sections of said

act: "Section 8. That the laws and ordinances of Porto Rico now in force shall continue in full force and effect except as altered, amended or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable or the provisions hereof, until altered, amended or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States." * * *

173 "Section 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of general orders, numbered one hundred and eighteen, as promulgated by Brigadier General Davis, United States volunteers, August sixteen, eighteen hundred and ninety-nine, and including also the police courts established by general orders numbered one hundred and ninety-five, promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier General Davis, United States volunteers, and the laws and ordinances of Porto Rico and the municipalities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued." * * * Although section eight reads that the laws and ordinances in Porto Rico now in force shall *continue* in force and effect, except as altered, amended, etc., it should nevertheless be held that by said act the laws of Porto Rico became creatures of Congress and American laws by re-enactment; and that they must be construed in accordance and in conformity with the spirit,

174 application, tendency and policy of American jurisprudence, and everything contrary thereto, or inconsistent, incompatible or unsuitable, must fall without any special legislative action in that respect. And although said section thirty-three provides "that the judicial powers shall be vested in the courts and tribunals of Porto Rico as already established," * * * "all of which are hereby *continued*," they became thereby courts created and established by the Congress of the United States. It could not have been the intention of the military government, and certainly not that of Congress, to make and constitute the supreme court of Porto Rico a court of cassation, thereby giving it all the attributes of the supreme court of Spain. American doctrines and theories must control the courts of Porto Rico even in the construction of the laws of Spain which are still found on the statute books of Porto Rico. It is a principle of law recognized in the United States and adopted by this court that, when the laws of a foreign country come under consideration by the courts of the United States, they will be construed in accordance with the constitution, institution, spirit, and jurisprudence of the latter's courts, irrespective of the construction of the courts

175 or other bodies of foreign countries. In a suit before the Supreme Court of the United States as to whether a certain foreign institution was a corporation or joint stock company, the

court said: "It is also urged that the several acts of Parliament we have mentioned expressly declare that they shall not be held to constitute the body a corporation. But whatever may be the effect of such declaration in the courts of that country, it cannot alter the essential nature of a corporation or prevent the courts of another jurisdiction from inquiring into its true character, whenever that may come into issue. It appears to have been the policy of the English law to attach certain consequences to incorporated bodies, which rendered it desirable that such associations as these should not become technically corporations. Among these it would seem from the provisions of these acts, is the exemption from individual liability of the shareholder for the contracts of the corporation. Such local policy can have no place here in determining whether an association, whose powers are ascertained and its privileges conferred by law, is an incorporated body." Liverpool & London Life and Fire Insurance Company *vs.* Henry K. Oliver, treasurer, 10 Wall.
176 566–577. I, therefore, arrive at the conclusion that since courts of cassation, rules of cassation, and appeals of cassation are foreign to our laws and le system, they must be construed and interpreted so as to be in harmony with the legal procedure and methods governing courts in the United States. Writs of error have not yet been enacted in Porto Rico, and the supreme court should therefore be considered a court of appeals, with power to review any error apparent upon the record. It has been generally held in the courts of the highest jurisdiction of the United States that where an error is apparent in the record it need not be presented by bill of exceptions even; but in this case the appellant has amply pointed out the errors of the trial court in its ruling. The execution of the document in controversy is not denied by the defendant and appellant. There could therefore, not have been any other proper evidence before the trial court except the document itself. The construction thereof is the only point in issue, which cannot be affected by any verbal testimony. It is a historic fact, of which the court should have taken judicial cognizance, that at various periods during the Spanish government,
177 the circulating medium had to undergo many changes, and at about the date of the execution of the document in issue a change from Mexican to Spanish money (moneda provincial) had been or was about to be, made, the difference being about five per cent. in favor of the latter money. It is a universal principle of law that courts in construing contracts must place themselves in the attitude of the contracting parties. The Civil Code in force here, recognizing the principle referred to, contains the following sections: "Art. 1281.—If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed. If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail." "Art. 1282. In order to judge as to the intention of the contracting parties, attention must principally be paid to their acts contemporaneous and subsequent to the contract."

"Art. 1283. However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract." "Art. 1284. If any stipulation of a contract should admit of different meanings, it should be understood
178 in the sense most suitable to give it effect." Applying the principles of law set forth in these sections, it is obvious that the contracting parties at the time of the negotiations had in mind only the change of one "peso" to another "peso," simply a change of currency. It would be most unreasonable to presume that they had in mind a war with another nation, a change in sovereignty, and in consequence thereof a variation in its monetary system, and from silver to a gold standard of values. It would also be irrational to presume that if, for instance, the Kingdom of England had acquired the island of Porto Rico, that instead of Spanish pesos, pounds sterling would have to be paid. Nor is it reasonable to presume that the creditor would have been satisfied with francs instead of pesos in case the Republic of France had become the sovereign of Porto Rico. Such a demand by a creditor before a court of justice would be most remarkable and extravagant, when, in this instance, the debtor would have been required to pay sixty-six per cent. premium on the amount of his contract. This certainly was never contemplated by the parties. The construction
179 of the district court of Ponce of the contract in controversy permits of all these extraordinary comparisons. It is contended that aleatory contracts are authorized in Porto Rico. They are permitted in all countries where contracts depend upon future results, but in the construction of such agreements or bargains it must appear that the contracting parties had in mind the contingencies which might arise. A person may buy a growing crop, when both parties would take into consideration as well an abundant harvest as a destruction of the crop by the elements, but that the contracting parties would have in mind the probability of a war, a change of sovereignty, and a consequent change of the monetary system, is highly improbable. These views have seemingly been espressed by this court in the suit of Cayo *vs.* Balseiro y Georgetty, referred to by the majority of the court. The controversy in that suit was a document made and executed in 1894, the same year of the contract in this suit, and involving a similar or the same principle. Therein appeared the following clause: "And the balance of the price, amounting to twenty thousand pesos current money at the time the same becomes due and payable, shall be paid * * *
180 in gold or silver, to the exclusion of all paper money." The creditor contended that all payments due him after the passage of the above mentioned act of Congress of April 12th, 1900, would have to be made in American dollars instead of pesos. This court, however, holding otherwise, and speaking through Mr. Chief Justice Quiñones, states: "Notwithstanding, and although it could not be considered that the purchase of twenty thousand pesos and

interest must be held to be current money at the time the same becmoes due and payable at par, nevertheless the suit by Mrs. Josefa Cayol against Balseiro y Georgetty is not maintainable. Convinced, as seemingly she was by the clause of the instrument, as she alleges in her suit, on account of the prospective change of currency, which was expected from Mexican money, that the twenty thousand pesos and interest to be paid in such money as should be substituted therefor. The change of money having been established without considering the difference which could result in the relative value between the one and the other, the stipulation between the parties only referred to a special and particular case, and
181 could have no application to an incident entirely different and to one which the parties could not foresee; for such would be beyond the limits of human provision." "For this reason such events could not enter into the calculations and deliberations of the contracting parties that a change of money would be established five years thereafter by the American Government in consequence of the change of sovereignty which happened in this island; because once provincial money was substituted for Mexican money, that thereafter the currency of the United States of America, with a discount of forty per cent. of its value, should take its place. Hence on account of this extraordinary and unexpected event, article 1283 of the Civil Code is applicable which says: "However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract." The act of the Congress of the United States of April 12th, 1900, above stated, reads as follows: "Section 11. That for the purpose of retiring the Porto Rican coins now in circulation in Porto Rico and substituting there-
182 for the coins of the United States, the Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico known as the peso and all other silver and copper Porto Rican coins now in circulation in Porto Rico, not including any such coins that may be imported into Porto Rico after the first day of February, nineteen hundred, at the present established rate of sixty cents in the coins of the United States for one peso of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied. * * * Provided, however, that all debts owing on the date when this act shall take effect shall be payable in the coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named." The amount in said *cod*ument mentioned was owing by appellant to appellee on the 12th day of April, 1900, the day when said act of Congress did take effect. By said act it was declared that debts owing on that date should be payable in the coins of Porto Rico, then in circulation, or in coins of the United States at the rate of sixty cents for every peso; of course at the election of the debtor. The judgment of the district court at Ponce, holding

that instead of "pesos" due plaintiff the defendant should pay
183 "dollars" is in violation of said section eleven of said act of Congress, thereby giving it a retroactive character. The appellant in his writing of appeal duly excepts to this ruling and to all the verbal evidence before the trial court; claiming the privilege conceded by the act of Congress to pay sixty cents, money of the United States, for every peso he owed. It was not, nor could it have been, the intention of Congress to change or affect contracts made in Porto Rico prior to the treaty of peace between the United States and the Kingdom of Spain. They should remain undisturbed, and unchanged. The appellee had certain vested rights by virtue of the contract or document in controversy, namely, the amount due him by the appellant; subject, however, to the agreed conditions that one peso should be substituted for another peso, in the event the government of Spain should have changed the currency in the province of Porto Rico. Vested rights between contracting parties must remain unaffected by the change of sovereignty; they can be neither increased nor diminished by any legislation of the new government. "This is the principle of the law of nations, as expounded by the highest authorities. In the case of *The Fama*,
184 in the 5 C. Rob., 106, Sir William Scott declares it to be "the settled principle of the law of nations, that the inhabitants of a conquered territory change their allegiance, and their relation to their former sovereign is dissolved; but their relations to each other, and their rights of property not taken from them by the orders of the conqueror, remain undisturbed." Eugene Leitensdorfer *et al. vs.* James J. Webb, 20 Howard, 176, (U. S.) The Congress by retiring the Porto Rican coins and substituting therefor coins of the United States, fixed the value of the retired coinage only, and declared what amount or proportion of money of the United States should be paid by the debtor to his creditor instead of pesos on amounts owing at the date of the passage of the act, should the debtor so elect. For the various reasons above stated, I am of the opinion that the supreme court should have reversed the judgment of the district court of Ponce, and, as authorized under the existing laws here, should have rendered a decision to the effect that the appellant pay the appellee the amounts of money overdue or in past due, either in coins of Porto Rico which were in circulation of the twelfth of
185 April, 1900, or American coins, or dollars, at the rate of sixty cents for every peso.

June 28th, 1902.

LOUIS SULZBACHER.

The above copy agrees exactly with the original in English, and — issue the same for the purpose of annexing it to the corresponding record.

Porto Rico, June 28th, 1902.

(Signed) ANTONIO F. CASTRO.

186 Supreme Court of Porto Rico.

BELEN ESBRI, Widow of Cartagena,
vs.
THE HEIRS OF JUAN SERRALLES Y COLON; Their Legal Representative, Eduardo Wellenkamp. } Application for Appeal.

To the supreme court:

The defendants in this suit, through their counsel, Jose de Gusman Benitez, by these presents appeal from the judgment of the supreme court, rendered in this suit, the 28th of June, to the
187 Supreme Court of the United States, by virtue of which the undersigned prays the hon. court, to admit this appeal "in both effects,"* notifying the opposing party of the admission of the said appeal.

And for the preparation of the proceedings, and translation of the papers, for formulating the points of law on which the said appeal is to be based, and for the execution of such bond as this court may deem necessary by reason of the admission of the appeal, and the suspension of the execution of the judgment in this suit, I pray the court, to fix the term of three months.

San Juan, Porto Rico, July 10th, 1902.

(Signed) JOSE DE GUZMAN BENITEZ,
Counsel for Appellants.

Presented on the 10th of July. I reported the same to the court.
CASTRO.

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*Appeal for stay of the proceedings in the lower court, and transfer of the case to the higher court.

188 PORTO RICO, *July 11th*, 1902.

This supreme court being in the period of vacation, and the order, that must be entered on the preceding writing, not being one of mere procedure, let the same be filed in the office of the clerk of the court. Let the matter be reported to the court on the first Monday of the month of October, on which date the court will resume its sessions; and let the transmission of the records and of the certificate of the decision rendered on this appeal, on the 28th of June of this year, be suspended. Decreed by the chief justice, and marked by him with his rubric. I certify,—

(Signed) ANTONIO F. CASTRO.

The eleventh of July, I notified in legal form the counsel, Jose Guzman Benitez, of the preceding order; he signed it. I certify.—

(Signed) S. C. BOTHWELL, *Marshall.*

(Signed) JOSE DE GUZMAN BENITEZ.

On the same date, I notified in legal form the counsel, Herminio Diaz Navarro, of the preceding order; he signed it; I certify.

(Signed) S. C. BOTHWELL, *Marshall.*

(Signed) H. DIAZ.

189 To the supreme court:

I, Attorney Jacinto Texidor y Alcala del Olmo, in the appeal for annulment of judgment, taken by the heirs of Juan Serralles y Colon, in the proceedings instituted by Belen Esbri y Roubert, which appeal has already been decided by the supreme court, and is at present pending because of an appeal taken to the Supreme Court at Washington, in the most lawful and proper manner, appear before this court and state:

That my colleague, Attorney Herminio Diaz Navarro, who represented Belen Esbri, has, with the consent of his client, appointed me his substitute in the proceedings relating to this appeal, and in virtue of said substitution, I appear before this court.

I am of the opinion that I should be immediately notified of the action taken by the heirs of Serralles; but stating beforehand that it does not imply, on my part, the relinquishment of said notification, or of any of the rights that may pertain to my clients, I believe it to be my duty and my right, respectfully to call the attention of the court to a point of paramount importance respecting the said appeal.

I have examined the writing of said appeal, and I must say that according to the laws in force in the United States, the appeal
190 does not lie. The question at issue in this suit, is, whether the interest on a certain amount owed by the heirs of Juan Serralles, should be paid in the money current at present in the same numerical quantity as set forth in the respective deed, that is to say, at par, which was the opinion of the lower court, and also the opinion of the supreme court in its judgment in cassation, or whether they should be paid at a discount, by reason of the exchange, as claimed by the appellant.

According to the definite precept of section 35 of the Foracker act, appeals based on error or on violation of law, and appeals from the final decisions of the supreme court of Porto Rico, and of the district court of the United States, shall be allowed and may be taken to the Supreme Court of the United States, in the same manner, and under the same rules, and in the same cases as if they proceeded from the supreme courts of the Territories of the United States.

Among the Revised Statutes of the United States, we find one, dated March 3rd, 1885, wherein it is provided that no appeal shall be allowed from a judgment or decision in any litigation in law or in equity, in the supreme court of the District of Columbia or of any of the Territories of the United States, unless the amount involved,

excluding the costs, shall exceed the sum of $5000.00. (Supplement of the Revised Statutes of the United States, chap. 355, vol. 1, page 485.)

191 It is evident that the amount of the interests involved in the original suit, and later in the appeal in cassation, does not reach by far the amount of $5000.00; and as, in the case in question, the point in dispute is no other than the meaning of a contract executed by the parties to it, and as neither the Constitution of the United States, nor any treaty made by the United States, nor any law of Congress, is in any way touched upon or drawn into the discussion, but solely the said interpretation of the contract, I am of the opinion that such an appeal to the Supreme Court at Washington, is not admissible according to the legislation in force on the subject.

This being our opinion, we have taken the liberty of calling the attention of the court to these points, reserving the right to amplify our statements if the writing of the opposing party will be referred to us, as we think it will, in this appeal.

Therefore, I respectfully pray the court to consider me as having appeared in representation of Belen Esbri, and as having made the statements which appear in the context of this writing.

San Juan, Porto Rico, October 13th, 1902.

(Signed) JACINTO TEXIDOR.

192 PORTO RICO, *October 20th*, 1902.

Chief justice:
Quiñones.
Associate juitices:
Hernandez.
Figueras.
Sulzbacher.
McLeary.

Let the attorney, Jacinto Texidor, as counsel for Belen Esbri, widow of Cartagena, be notified of the writing presented by the attorney Jose de Guzman Benitez, counsel for the heirs of Juan Serralles, allowing him ten days to answer the same, and passing the proceedings over to him.

This was agreed to by the members of the court, and marked by the president with his rubric.

I certify.—
(Signed) A. F. CASTRO.

193 To the supreme court:

I, Jacinto Texidor y Alcala del Olmo, attorney at law, representing Belen Esbri, widow of Cartagena, in the appeal to the Supreme Court of the United States, taken by the heirs of Juan Serralles Colon, from the judgment rendered in cassation by the supreme court, in the litigation prosecuted by the said Belen Esbri and the heirs of Juan Serralles, in the most proper and lawful manner appear before the court and state:

That in the aforesaid representation of Belen Esbri y Roubert widow of Cartagena, I proceed to answer the writing o he opposing

party which was referred to me by this court, by order of the 20th of October, for a period of ten days, which has not yet elapsed.

It imports me above all, within the procedure and in legal form, to clear up an error which I made in my writing of the 13th of October, addressed to this hon. court, an error which was due to the lack of complete and accurate information, which I now possess, since the writing of the opposing party has been formally referred to me. And in rectification of said error, I must say the following:

That the subject of discussion in this suit has been not only
194 the interest (rentas) owed by the heirs of Juan Serralles y Colon to Belen Esbri y Roubert, widow of Cartagena, but also the principal; and not in the sense that the debtor questions the legitimacy or illegitimacy of the debt; but whether the debt and the revenues should be paid in American money, and in the same numerical quantity in which they appear in the deed wherein the said debt is acknowledged, nor whether the principal and interest should be paid at a discount, by reason of the exchange of the money; the latter being the appellant's contention, which was rejected by the district court of Ponce, and by this supreme court.

This having been established, it is my duty to insist on the argument set forth in the writing of the 13th of October, and in keeping therewith, I maintain that the appeal now taken by the attorney for the heirs of Juan Serralles y Colon, is absolutely inadmissible under the legislation governing the subject.

It being established by the organic act more commonly known as the Foraker bill, that the appeals for error and for violation of law, and appeals from the final decisions of the supreme court of Porto Rico, and of the district court of the United States, shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and subject to the same rules, and in the same
195 cases as from the supreme courts of the Territories of the United States, it is indispensable to have recourse to the statutes in force in the United States on the subject, and to be governed by them, in accordance with section 35 of the said Foraker bill, in ascertaining whether the proposed appeal is admissible or not.

We hold that there is a statute in force on the subject, which can be found in volume 1, supplement to the statutes in force in the United States, chapter 355, p. 485 of the said volume. It is dated March 3rd, 1885, and it is therein provided that no appeal whatever shall be allowed from a judgment or decision in any litigation in law or equity, in the supreme court of the District of Columbia, or of any of the Territories of the United States, unless the amount involved, excluding costs, should exceed 5000 dollars.

In this suit between Belen Esbri and the heirs of Juan Serralles y Colon, the point at issue has been the payment of the amount awarded to Belen Esbri y Rubert, in the division proceedings of the estate left by the late Nicolas Cartagena y Mangual, her husband. That amount, as appears from fact 3 of the writing of com-

plaint, initiating this suit, and from the documents produced to justify the said fact, consists of a share of 1165 pesos in a mortgage credit; that Nicolas Cartagena y Mangual had against Juan
196 Serralles y Colon, by virtue of a deed executed before the notary Joaquin Mayoral, on the 6th of October, 1894; which share was divided up, for the purpose of its collection, in two instalments: one of 1031 pesos, 66⅔ centavos; and the other, of 133 pesos, 33⅓ centavos.

The fact we have just stated, shows by itself alone with the irresistible evidence of the numbers, that the amount involved in the suit does not reach by far the amount fixed by the statute already cited.

In this suit the Constitution of the United States has not been drawn into discussion, nor any treaties made by them, nor any act of Congress.

Therefore, and according to the legal precept hereinbefore cited, the appeal proposed by the attorney of the heirs of Juan Serralles y Colon, is inadmissible, because it is not included in any of the cases in which, according to the legal precepts cited, it would be admissible. Thus, aside from the fact that for the preparation of said appeal, there has not been cited by the party who desires to take the same, any legal precept authorizing the taking of said appeal.

Therefore, I respectfully pray the court, to consider me as
197 being opposed to the admission of the appeal taken from the judgment of this supreme court, rendered in these proceedings, under date of the 23rd of June, 1902; and definitely to declare that the said appeal does not lie, the costs to be paid by the appellants.

San Juan, October 21st, 1902.

(Signed) JACINTO TEXIDOR.

198 PORTO RICO, *October 27th*, 1902.

Chief Justice: Quiñones.
Associate Justices: Hernandez. Figueras. Sulzbacher. McLeary.

Let the preceding writing be referred to the party, represented by the Attorney Jose de Guzman Benitez, for a period of ten days, with delivery of the record of the proceedings.

It was ordered by the members of the court, and marked by the chief justice with his rubric. I certify.

(Signed) ANTONIO F. CASTRO.

199 To the supreme court:

I, Attorney Jose de Guzman Benitez, counsel for the heirs of Juan Serralles, appear before this court in the appeal which I have taken to the Supreme Court of the United States, from the judgment which this court has rendred by virtue of cassation in the suit which is being prosecuted against my clients by Belen Esbri, for the collection of certain sums in American money, and, in reply to the writing of the

distinguished counsel, Mr. Texidor, of the 21st of last October, opposing the admission of the pending appeal, which writing has been referred to me, I will say: That the court should disregard the opposition of the other party, with the costs against the same, and admit the appeal in question, in both effects, such as I established it in my writing of the tenth of July last; for that is what should be done by virtue of the following reasons:

Before proceeding, it is my duty to correct the error of omission which my distinguished colleague has, without doubt, unvol-
200 untarily committed, when he cited the statute of the United States, approved March 3rd, 1885.

The said statute literally copied, reads as follows:

"No appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law, or in equity, in the supreme court of the District of Columbia or in the supreme court of any of the Territories of the United States, *unless the matter in dispute shall exceed the sum of five thousand dollars. This section shall not apply to any case* wherein is involved the validity of any patent or copyright, *or in which is drawn in question* the validity of any treaty or *statute of*, or an authority exercised under *the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute.*"

And in virtue of what has been stated, I maintain that the court ought to admit the perfecting of the appeal, and in support of my opinion, I present the two following reasons:

First.

The amount affected by the judgment from which appeal is taken, exceeds the amount of five thousand dollars, without reckoning the costs and interest; and

201 Second.

One of the grounds for the appeal in cassation taken by me, has been the organic act of the Congress of the United States, of the 12th of April, 1900, whose application, authority, and efficacy, have been denied in this judicial case, by the decision of the supreme court, from which I have taken this appeal.

So that, even supposing that the amount affected by the decision, did not exceed five thousand dollars, the admission of the appeal would nevertheless be proper, because the force and authority of a statute of the United States, is brought into question.

First ground.

A. The question in this suit is not the payment of an obligation relative to a determined number of pesos which the debtor refuses to pay, or cannot pay. What Belen Esbri has pretended, is, according to the original complaint, that the court, in construing the meaning

of the deeds of the first of September, 1894, and the sixth of October of the same year, which were the instruments of the contract executed by Nicolas Cartagena and Juan Serralles, who was
202 represented by Wellenkamp, should declare that the interest (rentas) of the principal owed, and the principal itself, should be paid in American gold, instead of the special money of Porto Rico.

B. According to the judgment of the Ponce court and that of the supreme court, in view of their headings, conclusions of law, and that part of said judgments, which contains the decision, what has been decided in these judgments, is a question of interpretation of the deed originating the obligation to pay the amount of ten thousand or more pesos, which is the rest of the price of the sale guaranteed by mortgage, the payment of which is pending at the present time.

C. The right claimed by Belen Esbri, does not originate from an obligation constituted in her favor, but is a part of a whole, the civil binding cause of which is the same for all the participants in the inheritance of Nicolas de Cartagena. So that Belen Esbri has acquired said right by a universal title, the same as the co-heirs.

D. Therefore, the construction given in the judgments to the clauses of the contract, affects, not only the rights of Belen Esbri, but also those of all the other participants in the total
203 amount of the instalments still pending as balance of the eighteen thousand pesos, to which the said contract refers.

E. So much so, that the contract, executed between Cartagena and Serralles, having been construed as it has been, and once the judgments rendered in this suit have become final, the heirs of Serralles could not object to the claim on the part of the other co-owners of the said credit, that the amount of the other instalments and revenues to be paid to them in American gold at par.

D. The judgment from which I have appealed, affects, therefore, the obligation in its entirety, and the decision rendered respecting one of the instalments, and one of the participants, produces the effect of *res judicata*, so far as the interpretation of the same point is concerned, with regard to all the other instalments and all the other co-owners of the whole.

E. As already indicated, there are still over ten thousand pesos, in instalments, the payment of which is pending according to the contract of the first of September, and its ratification of the
204 sixth of October, 1894, without computing the revenues (rentas), which quantities of pesos are now converted into dollars according to the judgment of the supreme court.

It is, therefore, demonstrated that the amount involved in this case, exceeds the sum of five thousand dollars, excluding interest and costs.

Second ground.

A. As appears from the answer to the complaint, from the first, the heirs of Serralles alleged in the legal grounds stated by them, that they were protected by section 11 of the act of Congress, of April 12th, 1900, which section, in the part of it which is pertinent to the question, reads as follows:

"* * * The Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico, known as the peso, and all other silver and copper Porto Rican coins now in circulation in Porto Rico, not including any such coins that may be imported into Porto Rico after the first day of February, 1900, at the present established rate of sixty cents in the coins of the United States for one peso of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied. * * * Provided, however, that all debts owing on the date when this act shall take effect, shall be paid over in coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named."

205 B. In the dissenting opinion, which was given by Carlos Franco Soto, associate judge of the district court of Ponce, at the time when judgment was rendered in this suit, the organic act of the United States of the 12th of April, 1900, was alleged by the said judge, as one of the grounds for expressing his opinion in favor of the heirs of Serralles, and he used the same arguments that I have invoked afterwards in my appeals.

C. According to the writings of the heirs of Serralles, establishing the appeal in cassation before the district court of Ponce, and perfecting the same before the supreme court, the said act of the 12th of April, 1900, has been cited as one of the precepts violated by the decision of the lower court, and now the counsel for the appellants alleges that this act has also been violated by the decision of the supreme court.

D. According to this same decision, the supreme court has made special mention of the said act of Congress of the 12th of April, 1900, in the conclusions of law (considerandos) in said decision.

206 E. All that has been stated, shows that, contrary to the assertion made by Mrs. Esbri, the violation and non-application of the statute of the United States so often mentioned, *i. e.*, that of the 12th of April, 1900, has been the special subject of the controversy and of the judgment in the suit in which I appear.

F. After the above has been stated, it is clear and evident that the case comes within the second part of the statute of the 3rd of March, 1855, since the judgment of the supreme court of the 28th of June, 1902, decides that the statute of the 12th of April, 1900, is of no efficacy in this case, and is not an authority applicable to it, notwithstanding our assertion in conformity with same, that the heirs of Serralles are not bound to pay more than sixty cents American gold for each one peso of the ten thousand and odd pesos, the pay-

ment of which is still pending out of the eighteen thousand stipulated as pesos of Porto Rican currency in the contracts of the first of September and the sixth of October, 1894.

For the reasons hereinbefore set forth, I pray the court, to dismiss the objection raised by the counsel of Belen Esbri, and admit the appeal as I have prayed from the beginning.

San Juan, Porto Rico, November 18th, 1902.

(Signed) JOSE DE GUZMAN BENITEZ.

207 PORTO RICO, *December 10th*, 1902.

This tenth day of December, 1902, in the fifth ordinary term of the sessions of the supreme court of Porto Rico, for the year 1902, the court holding session in its court room, in the city of San Juan, Porto Rico, there being present the chief justice and all the associate justices of the said court, on motion duly made by Jose Guzman Benitez, counsel for the appellant and defendant in this suit, who, having appeared and filed an application praying that an appeal be allowed, it is hereby ordered that the said appeal be, and the same is hereby, allowed, in accordance with the said application, in order that the Supreme Court of the United States may review the judgment and decree rendered by this court, on the 28th of June last; the amount of the bond that must be presented and filed by virtue of the said appeal, being fixed at two thousand dollars, ($2.000) and when the said bond, guaranteed by the signatures of sureties duly approved, shall have been filed, the execution of the judgement and decision rendered in this suit, shall be suspended

208 until further order of the Supreme Court of the United States, or of this court; and, by these presents, the appellant is granted thirty days for the presentation and approval of the said bond and ninety days for the preparation of the copy and translation of the proceedings, which, according to the law, must be made and presented to this court for its approval,—both terms to count from the present date.—It was ordered by the members of the court, and signed by the chief justice; I certify.—

(Signed) ANTONIO F. CASTRO.

209 Know all men by these presents, that we, the succession of Juan Serralles, through our attorney in fact, Eduardo Wellenkamp, as principals, and Manuel Vidal and Mariano Vidal, as sureties, are held and firmly bound unto Belen Esbri in the full and just sum of two thousand dollars, to be paid to said plaintiff, her heirs, executors, administrators and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this seventeenth day of December, A. D., 1902.

Whereas lately, at the third term of the supreme court of the

island of Porto Rico, in a certain suit pending between the above named Belen Esbri, as plaintiff and appellee, and succession of Juan Serralles as defendant- and appellants, a judgment or decree was rendered against the said appellants, and they having prayed an appeal from said judgment and decree to the Supreme Court of the United States;

Now, the condition of this obligation is such that if the said appellants shall prosecute their appeal to effect, and pay the amount or amounts due by said appellants to said appellee, and also answer all costs if they fail to make good their plea, then this the
210 above obligation to be void; otherwise to remain in full force and virtue.

(Signed) E. WELLENKAMP. [SEAL.]
Attorney in Fact of Succession Serralles.
(Signed) MANUEL VIDAL. [SEAL.]
(Signed) MARIANO VIDAL. [SEAL.]

The above signed sureties Manuel Vidal and Mariano Vidal do hereby solemnly swear that all and each one of them, have property or capital exempt from all debts or responsibilities for more than two thousand dollars.

Signed and sworn to before me, this 17th day of December, A. D. 1902.

(Signed) MANUEL VIDAL.
(Signed) MARIANO VIDAL.
(Signed) JUAN PRINCIPE,
Municipal Judge.

Approved on this 28th of January, 1903.
(Signed) A. F. CASTRO,
[SEAL.] *Secretary of the Supreme Court of Porto Rico.*

*This is a true copy of the English original.

211 To the supreme court:

I, Jose de Guzman Benitez, counsel for the heirs of Juan Serralles in the suit with Belen Esbri, and in the proceedings of appeal to the Supreme Court of the United States, appear in this court, and respectfully state: That the time fixed for the performance of the formalities required in the rules of the Supreme Court of the United States for appeals not having yet expired, I am under the necessity of calling the attention of this court to a defect of form, which is found in the order of the 10th of December last, whereby the appeal I have taken, was admitted.

As will be observed, the order in question is more adapted to the form used in the American practice of procedure for the admission of appeals taken from judgments rendered by the circuit courts of the United States, than to the form of the appeals that are taken from judgments of the supreme court- of the Territories.

The former courts are a part of the organization of the Federal courts; the latter constitute the supreme authority in the local judiciary.

The statute of the United States, approved March 3rd, 1885, to which I referred in my writing of the 18th of November last, establishes the rules for the admission of appeals from the supreme
212 courts of the Territories; but does not comprise the appeals originating in the Federal courts.

Hence it is that the forms of the orders for admission of appeals from the two classes of courts, must be different, and that orders of this kind issued by the supreme courts of the Territories, should conform to the terms of the said statute of the 3rd of March, 1885.

For the purposes of these appeals, the supreme court of Porto Rico is considered a supreme court of a Territory.

It follows, therefore, that the greater part of the terms, in which the order of the 10th of December, 1902, is worded, are not adapted to the form used by the said supreme courts of the Territories, but to the form used by the circuit courts, the appeals from which are not subject to the same conditions.

In virtue thereof, I take the liberty of suggesting to the court, the convenience of amending the said order of the 10th of December, 1902, in such a manner as to embrace the following points:—

1. That in this suit, which has been decided by the court, so as to disallow the appeal in cassation, section 11 of the law of Congress which was approved April 12th, 1900, and took effect on the first of
May of the same year, being entitled "An act to provide tem-
213 porarily revenues and a civil government for the island of Porto Rico, and for other purposes," is held to be inapplicable and ineffectual with regard to the case, and especially that part of the said section, which provides that "all the debts pending at the time the said law takes effect, shall be paid in the money of Porto Rico, then in circulation, or in money of the United States, at the rate of exchange fixed in said section, which law has been invoked in the appeal which was established by the heirs of Serralles, and disallowed by this supreme court.

2. That the judgment rendered in this suit, on the 28th of July, 1902, decides the form in which the total amount of the pending debt and interest, which exceeds ten thousand pesos Porto Rican money, shall be paid, and that, therefore, the amount involved in the suit, excluding the costs, exceeds five thousand dollars: and

3. That with such formalities as the court may deem proper, a bond be fixed, proportionate to the case for the admission of the appeal; the appellant being ready to furnish such bond, even if it should be fixed at fifteen thousand dollars.

By reason of the aforesaid, I pray the court to take into
214 consideration the grounds alleged, and by way of amendment, to issue an order to take the place of that of the 10th of December, 1902, modifying the same in the manner suggested,

and to let said order take effect from the said date; and to grant me an extension of time for the translation and printing of those parts of the record of the case, which must be forwarded to the Supreme Court of the United States.

San Juan, P. R., February 27th, 1903.

(Signed) JOSE DE GUZMAN BENITEZ.

215 PORTO RICO, *May 4th*, 1903.

Chief justice:
Quiñones.
Associate justices:
Hernandez.
Figueras.
McLeary.
Sulzbacher.

Having examined the writing presented by the attorney, Jose de Guzman Benitez, in behalf of the heirs of Juan Serralles, wherein he prays for an amendment of the order of this court, of the 10th of December, last, in the sense requested in the said writing.

Concluding that the application of the said attorney, is not based on grounds which can be sustained, since the difference between the proceedings of appeal in cases of the supreme courts of the Territories, and those in cases of the Federal courts, is not so great as indicated, and *if* even if it were would not justify the amendment prayed for.

The application of the attorney, Jose de Guzman Benitez, praying for an amendment of the order of the tenth of December last, is denied, and he is granted four months more, to be reckoned from the date he is notified of this order, to prepare the translation and certified copy of the proceedings that he will have to present to the Supreme Court of the United States, for the decision of the appeal taken.

This was ordered by the members of the court, and is marked by the chief justice, with his rubric; to which I certify:

(Signed) A. F. CASTRO.

216 On the 4th of May, I notified, in legal form, the attorney, Jacinto Texidor, of the preceding order: he signed it; to which I certify.

(Signed) J. TEXIDOR.
(Signed) S. C. BOTHWELL, *Marshall*.

On the same ddate, I notified, in legal form, the attorney, Jose de Guzman Benitez, of the foregoing order; he signed it; to which I certify:

(Signed) JOSE DE GUZMAN BENITEZ.
(Signed) S. C. BOTHWELL, *Marshall*.

217 To the supreme court:

I, Josié de Guzman Benitez, counsel for the heirs of Serralles, who are represented by their attorney, Mr. Eduardo Wellenkamp, in the suit prosecuted against them by Mrs. Belen Esbri, for the collection

of sums in American gold, at par, appear before the court in the proceedings regarding the appeal to the Supreme Court of the United States, and say:

That, in compliance with the tenor of the order of the court, of the 4th of May last, I enclose herewith, prepared and translated into English, on two hundred eleven folios, the particular documents, which, having been designated by the court, with the consent of both litigating parties, are to be transmitted to the said Supreme Court.

It is now necessary that, after report has been made by the interpreter of the court, *that* the translation is correct, and after a certificate has been issued by the clerk, that the documents translated are the same that were designated, the court be pleased to approve the said translation, and to order that it be stated by the clerk, at the foot of said translation, that it is a genuine, correct and exact reproduction of those points of the suit, which have been approved by the court, for the purpose of being transmitted to the Supreme Court of the United States, in order to perfect the appeal.

218 I request the court, to be pleased to adopt a resolution to that effect, and to order, after it has been done, that the aforesaid documents, translated and thus legalized, be delivered to me, in order that, through my medium, they may reach the office of the clerk of the Supreme Court of the United States.

Another request: For the presentation of the said documents before the Supreme Court, I request the court, to be pleased to assign to me a reasonable term.

San Juan, August 18th, 1903.

(Signed) JOSÉ DE GUZMAN BENITEZ.

219 SAN JUAN, PORTO RICO, *August* 21*st*, 1904.

The aforesaid writing having been presented, let, with regard to the principal petition, the translation enclosed therewith, be delivered to the interpreter of this court, in order that he may certify respecting the truth and exactness of the same; and with regard to the second petition, it will be answered at the proper time.

It was ordered by the chief justice, and he affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

220 On the thirteenth of January, 1904, I state that this record and roll of the proceedings, together with the translation referred to in the above order, have been returned by the interpreter and translator of this court, and I report it to the court, stating that in the said translation, the interpreter has found many mistakes and inaccuracies; it being necessary to again copy all the documents; I certify.

(Signed) CASTRO.

221 SAN JUAN, PORTO RICO, *January 13th*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

Let the copies that have been presented, be delivered to the lawyer who represents the appellants, in order that he may cause a clean copy to be made of the same, returning the originals for their ratification and comparison.

It was ordered by the court, and the chief justice affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

222 To the supreme court:

I, José de Guzman Benitez, counsel for the heirs of Serralles, who are represented by their attorney, Mr. Eduardo Wellenkamp, in the suit prosecuted against them, by Mrs. Belen Esbri, for the collection of sums in American gold, at par, appear before the court in the proceedings relating to the appeal to the Supreme Court of the United States, and say: That in accordance with the order of your honors, the copies presented by us, have been delivered to me under date of the 15th inst., in order that I may cause a clean copy to be made of the same, and return the originals for their ratification and comparison. In the decree, ordering the aforesaid, no term is fixed for the return of said copies; but having been informed by the clerk, that they must be returned within eight days, and it being impossible for me to do so, first, because, as your honors are aware, the undersigned attorney was absent in the United States, whence he returned last night, and he has not had any time as yet to obtain an intelligent typewriter who knows the English language; and second, because, on account of the work of the legislative assembly, the most competent typewriters to be had, and who know the English language, are occupied with the work of the said legislative assembly.

Wherefore I request your honors, to be pleased to grant
223 me an extension of eight days, in order that I may be able to deliver the documents referred to.

This is justice, which I request at San Juan, Porto Rico, on the 21st of January, 1904.

(Signed) JOSÉ DE GUZMAN BENITEZ.

224 PORTO RICO, *January 26th*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

The preceding writing of the attorney, José de Guzman Benitez, having been presented, the petition contained in the same, is granted as requested.

It was ordered by the court, and the chief justice affixed his rubric: I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

225 To the supreme court:

I, José de Guzman Benitez, counsel for the heirs of Serralles, in the appeal to the Supreme Court of the United States of America, in the suit prosecuted against my clients, by Mrs. Belen Esbri, appear before the court and state:

That I again enclose herewith, the copied translation of the documents in this appeal, which translation has been changed in accordance with the corrections made in the first copy, by the interpreter of the court.

And

I request the court, to be pleased to consider the same as having been presented for the purposes of justice.

San Juan, February 5th, 1904.

(Signed) JOSÉ DE GUZMAN BENITEZ.

226 PORTO RICO, *February 8th*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

The foregeing writing having been presented, let the copies refered to in the same, be delivered to the interpreter of this court, for their ratification, and comparison with their respective originals.

It was ordered by the court, and the chief justice affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

227 On the 10th of February, the copies are delivered to the interpreter of this court, for the purpose indicated in the foregoing order; he signs as evidence of said delivery; I certify.

(Signed) E. JAENECKE.
(Signed) CASTEJON.

228 On the eleventh of May, I state that the copies referred to in the foregoing note of delivery, were returned by the interpreter, and that there are in the same many mistakes and omissions; it being necessary to copy the same anew; I certify.

(Signed) CASTRO.

229 PORTO RICO, *May 12th*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

Let the corrected copies be delivered to the attorney, José de Guzman Benitez, in order that, within the term of fifteen days, which term cannot be extended, he may cause a clean copy to be made of the same.

It was ordered by the court, and the chief justice affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

230 To the supreme court:

I, José de Guzman Benitez, attorney for the heirs of Serralles, in the proceedings of appeal to the Supreme Court of the United States, in the suit prosecuted by Mrs. Belen Esbri, against the said heirs, before the court appear and state: That, in order to fully justify the delay in transmitting the appeal to the Supreme Court, it is proper—and I request the court to be pleased to order—that all the petitions, resolutions and notes made and certified to by the clerk, necessary for such justification, be translated and annexed to the record of this suit, that is to say, all the petitions, resolutions, and notes, which have been made and appear in the record from and after the 18th of August, 1903, inclusive, and including those that may be made until the decree be issued, by which the true translation of the record is approved, and by which it is ordered, to issue the certificate which has to be sent, together with the said record.

San Juan, May 19th, 1904.

(Signed) JOSÉ DE GUZMAN BENITEZ,
Attorney at Law.

231 PORTO RICO, *May 23rd*, 1904.

Members of the court.
Chief justice:
Quiñones.
Justices:
Hernandez.
Figueras.
MacLeary.

The foregoing writing having been presented, let that which has been requested in the same, be done; a term of ten days being granted to that effect.

It was ordered by the court, and the chief justice affixed his rubric: to which I certify.

[Rubric of Chief Justice.]

(Signed) A. F. CASTRO.

232 To the supreme court:

I, Jose de Guzman Benitez, counsel for the heirs of Serrralles, in the appeal taken before the Sup-eme Court of the United States, from the judgment rendered in the suit prosecuted against my clients, by Mrs. Belen Esbri, appear before the court and state: That I enclose herewith, the record of the proceedings copied anew, and corrected in accordance with the last amendments made by the interpreter of this court.

And doing this within the term of fifteen days, which the court was pleased to fix.

I request the court, to be pleased to consider the said record as having been transmitted herewith, to approve the same, and to take such action as I have previously requested.

San Juan, Porto Rico, May 28th, 1904.

(Signed) JOSÉ DE GUZMAN BENITEZ,
Attorney at Law.

233 PORTO RICO, *June 1st*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

Let the record of proceedings be delivered to the interpreter, in order that he may certify whether the copies presented, are true translations of their respective originals. It was ordered by the court, and the chief justice affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

234 On the 2nd of June I delivered the copies referred to in the foregoing order, to the interpreter of this court, for the purposes set forth in said order: I certify.

(Signed) CASTRO.

235 To the supreme court:

I, José de Guzman Benitez, counsel for the heirs of Serralles, in the appeal taken before the Supreme Court of the United States, from the judgment rendered in the suit prosecuted against my clients, by Mrs. Belen Esbri, appear before the court and state: That I enclose herewith the translated copies of all the particulars contained in the rollo (record of the proceedings before the supreme court of Porto Rico) up to the present date, in accordance with my previous request and the last order of the court.

And doing this, within the term of ten days, which the court was pleased to fix; I request the court, to be pleased, to consider the said translations as having been presented herewith, to approve the same, and to take such action as I have heretofore requested.

San Juan, Porto Rico, June 4th, 1904.

(Signed) JOSE DE GUZMAN BENITEZ,
Attorney at Law.

236 PORTO RICO, *June 7th*, 1904.

Members of the court.
Chief justice: Quiñones.
Justices: Hernandez. Figueras. MacLeary.

Let the documents be delivered to the interpreter, in order that he may certify whether the copies presented, are true translations of their respective originals.

It was ordered by the court, and the chief justice affixed his rubric; to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

237 On the 8th of June, I deliver this record to the interpreter, for the purpose stated in the foregoing order; I certify.

(Signed) CASTRO.

238 I, Ernest Jaenecke, official interpreter and translator of the supreme court of Porto Rico,

Do hereby certify, that all the foregoing documents are true and correct translations of their originals in Spanish.

San Juan, P. R., June 16th, 1904.

E. JAENECKE,
Official Interpreter and Translator of the Supreme Court of Porto Rico

239 On the 17th of June, I report to the court that the interpreter has certified that the copies presented are true translations of their respective originals.

I certify.

(Signed) CASTRO.

240 PORTO RICO, *June 17th*, 1904.

Members of the court.
Chief justice:
Quiñones.
Justices:
Hernandez.
Figueras.
MacLeary.

In view of the statement made in the foregoing note, the translations presented are hereby approved; let the secretary certify that the documents which have been translated, are the same, the translation of which, pursuant to an agreement made by the parties to the suit, was ordered by this court, in a decree issued on the 27th of June of last year; and after this has been done, let the said certified translations be delivered to the attorney of the appellant, for transmission to the Supreme Court of the United States.

It was ordered by the court, and the chief justice affixes his rubric, to which I certify.

[RUBRIC.] (Signed) A. F. CASTRO.

241 I, Antonio F. Castro, secretary of the supreme court of Porto Rico, do hereby certify that the foregoing translated documents are the same which the court ordered to be translated pursuant to an agreement made by the parties in a cause pending in said court wherein The Heirs of Mr. Juan Serrallés y Colon represented by Mr. Eduardo Wellenkamp y Chelva their attorney in fact, are the appellants and Mrs. Belen Esbrí y Rubert, the appellee.

In testimony whereof, I have hereunto set my hand and the seal of said supreme court, in the city of San Juan, Porto Rico, this 27th day of June, in the year of our Lord, one thousand nine hundred and four.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,
Secretary of the Supreme Court of Porto Rico.

242 UNITED STATES OF AMERICA, ss:

In the Supreme Court of the United States.

HEIRS OF JUAN SERRALLES Y Colon and Legal Representative, Eduardo Wellenkamp, Appellants, *vs.* BELEN ESBRI, Widow of Cartagena, Appellee.	Appeal from the Supreme Court of Porto Rico.

Assignment of Errors.

Now come the appellants, by José de Guzman Benitez, their solicitor, and say, that in making, rendering and entering its final decree or judgment herein the said the supreme court of Porto Rico committed manifest error as follows:

I.

The court erred in refusing to entertain the appeal on the grounds alleged by the appellants in their writing of appeal.

II.

The court erred in holding that the appeal was not well taken and in adjudging the costs against the appellants.

III.

The court — in holding that the writing of appeal on behalf of the appellants was insufficient.

243 IV.

The court erred in refusing to take into consideration the infractions of law cited in the fifth item of the writing of appeal of appellants.

V.

The court erred in holding that articles 1091, 1256 and 1258 of the Civil Code were not infringed by the judgment entered in the trial court.

VI.

The court erred in holding that articles 1284 and 1289 of the Civil Code were not infringed by the judgment entered in the trial court.

VII.

The court erred in holding that articles 1445, 1449 and 1500 were not infringed by the judgment entered in the trial court.

VIII.

The court — in holding that articles 1281, 1283, 1284 and 1289 were not infringed by the judgment entered in the trial court.

IX.

The court erred in holding that appellants were required under the contract in question to pay the indebtedness stipulated therein at the rate of 100 cents of American money for each peso of the currency in circulation at the date of said contract, or for each peso of the Spanish money afterward in circulation in Porto Rico.

244

X.

The court erred in holding that the appellants were required to pay one dollar in American money for each peso of said indebtedness.

XI.

The court erred in holding that under the contract in question one centavo of Mexican money or one centavo of the special Spanish money of Porto Rico was equivalent to one cent of United States money.

XII.

The court erred in holding that the indebtedness in question must be liquidated by the appellants at the rate of eighteen thousand dollars of United States money for the eighteen thousand pesos specified in said contract.

XIII.

The court erred in holding that the judgment entered herein in the trial court did not infringe the terms of section 11 of the act of the Congress of the United States entitled, "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900.

XIV.

The court erred in denying to the appellants the benefit of the act last mentioned, and in holding that said act had no application to the indebtedness herein involved.

245

XV.

The court erred in not holding that the indebtedness in question must be paid by appellants at the rate of sixty cents in coin of the United States for each peso of said indebtedness.

XVI.

The court erred in holding that the indebtedness in question must be paid by appellants at the rate of 100 cents in money of the United States for each 100 centavos mentioned in the contract in question.

XVII.

The court erred in hold that clause three of the deed of purchase and sale of October 6, 1894, had been correctly construed and interpreted by the trial court.

XVIII.

The court erred in not reversing and remanding the judgment entered in the trial court.

JOSÉ DE GUZMAN BENITEZ,
By J. S. H., *Solicitor for Appellants.*

JAS. S. HARLAN,
Of Counsel.

246 UNITED STATES OF AMERICA, *ss:*

To Belen Esbri, widow of Cartagena, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the supreme court of Porto Rico, wherein The Succession of Juan Serralles, by their attorney in fact, Eduardo Wellenkamp, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable José Severo Quiñones, chief justice of the supreme court of Porto Rico, this thirteenth day of August, in the year of our Lord one thousand nine hundred and four.

JOSÉ S. QUIÑONES,
Chief Justice of the Supreme Court of Porto Rico.

247 On this twenteenth day of August, in the year of our Lord one thousand nine hundred and four, personally appeared Manuel J. Vidal before me, the subscriber, Rosendo Matienzo Cintron, notary public of Ponce, Porto Rico, and makes oath that he delivered a true copy of the within citation to Belen Esbri, widow of Cartagena.

MANUEL J. VIDAL.

Sworn to and subscribed the 20th day of August *August Ponce*, A. D. 1904.

[Seal of Rosendo Matienzo y Cintron, Notario, Ponce, P. R.]

LEDO. ROSENDO MATIENZO CINTRON,
Notary Public.

248 [Endorsed:] File No. 19,424. Supreme Court U. S., October term, 1904. Term No. 324. Succession of Juan Serralles, &c., app'ts, *vs.* Belen Esbri, widow, &c. Citation and proof of service. Filed Sept. 19th, 1904.

Endorsed on cover: File No. 19,424. Porto Rico supreme court. Term No. 324. The Succession of Juan Serralles, by their attorney in fact, Eduardo Wellenkamp, appellants, *vs.* Belen Esbri, widow of Cartagena. Filed July 25th, 1904. File No. 19,424.

FILE COPY.

Office Supreme Court U. S.
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NOV 21 1905
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

The SUCCESSION of JUAN SERRALLES, by their Attorney in fact, EDUARDO WELLENKAMP,
Appellants,
vs.
BELEN ESBRI, widow of Cartagena,
Appellee.

Appeal from Supreme Court of Porto Rico.

No. 65.

BRIEF AND ARGUMENT FOR THE APPELLANTS.

JAMES S. HARLAN.
ATTORNEY FOR APPELLANTS.

THE OUNTHORP-WARREN PRINTING CO., 116 RANDOLPH STREET, CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

The SUCCESSION of JUAN SERRALLES, by their Attorney in fact, EDUARDO WELLENKAMP, *Appellants,* *vs.* **BELEN ESBRI, widow of Cartegena,** *Appellee.*	Appeal from Supreme Court of Porto Rico No. 65.

This is an appeal from a judgment entered on June 28, 1902, in the Supreme Court of Porto Rico affirming a judgment entered on September 17, 1901, in the District Court of Ponce, in an action known in the Spanish law as a "declaratory action." The case bears some analogy to foreclosure proceedings familiar to the courts of the United States in that it is an effort to collect money due upon a mortgage of real estate. The final order of the lower court embraces not only the interest due when the suit was started but the interest accruing subsequently as well as the installments of principal that subsequently became due.

The appeal to this court is based upon a federal question. And in its result to the appellants the final order of the lower court may fairly be said to involve an amount in excess of $5,000 exclusive of interest and costs.

STATEMENT OF FACTS.

The sugar estate of thirteen hundred *cuerdas*, known in Porto Rico as the "Ursula" plantation, is situated in the Cintrona ward of the municipality of Juana Diaz. Prior to the time involved on this record the title to the property seems to have rested jointly in several different persons. The result was a litigation in which there was finally set over in fee simple to Don Jose Nicholas de Cartegena y Mangual an undivided interest equivalent to 18 per cent. of the value of the plantation then estimated at the sum of 80,000 *pesos*. Subsequently Sr. Cartegena arranged a sale of his undivided interest to Don Juan Serralles y Colon for the sum of 18,000 *pesos*, to be paid in certain installments, with interest at the rate of 10 per cent. per annum, in the manner provided in the deed of "purchase and mortgage" (Rec., 14) executed by the parties on September 1, 1894, before Sr. Joaquin Mayoral of the College of Notaries. The payment of the several installments with interest thereon, as they matured, was secured in the same instrument by a mortgage upon the undivided interest so purchased by Sr. Serralles. (Rec., 14-18.)

Within a few days after the date of this transaction, the fact developed that Sr. Cartegena had originally acquired his undivided interest in the plantation during his marriage to his first wife. According to the law, it was therefore property that pertained to the "conjugal partnership." The death of his first wife, after the undivided interest was so acquired by Sr.

Cartegena and before its sale to Sr. Serralles, had dissolved the conjugal partnership, and that portion of the undivided interest that pertained to the wife by virtue of the conjugal relation, became the property of her minor children. (Rec., 23.) They ought therefore to have been joined with their father as grantors in the conveyance to Sr. Serralles. But this requirement had been overlooked.

To correct the blunder in the first deed proper proceedings were had, the details of which are not pertiment to this discussion. It will suffice to say that on September 14, 1894, the undivided interest of Sr. Cartegena and his minor children in the property mentioned, the whole value of which was 18,000 *pesos*, was apportioned among them by the court in the proportion of 12,133 *pesos* and 33⅓ *centavos* to the father and 5,866 *pesos* and 66⅔ *centavos* to his minor children. The sale of the property to Sr. Serralles was then carried out, proper authority to do so having been given by the court on behalf of the minor children. (Rec., 23.) The transaction with Sr. Serralles, as thus reformed, became effective in a second deed of "sale and mortgage" dated on October 6, 1894. (Rec., 20.)

It thus happened that when Sr. Cartegena subsequently died there appeared as item 3 upon the inventory of his estate (Rec., 3) a claim against Sr. Serralles for 12,133 *pesos* and 33⅓ *centavos*. Cartegena had married again and in the division of his estate, made after his death with the approval of a family council for his minor children, Dona Belen Esbri y Rubert, his second wife and widow and the appellee

herein, was awarded in usufruct the sum of 1,365 *pesos*. This amount included 200 *pesos* of household effects, and an interest in the mortgage indebtedness above mentioned of 1,165 *pesos*. (Rec., 1.) On the face of the pleadings the ostensible object of the suit was to force the appellants to pay the 1,165 *pesos* to the appellee in American dollars. The real purpose of it, as shown hereafter, was to establish that basis of payment for the whole unpaid balance of the indebtedness, amounting to about 12,000 *pesos*.

The deed of purchase and mortgage of September 1, 1894, above referred to, contained a clause, the general substance of which was incorporated in many other documents evidencing agreements and other transactions entered into in Porto Rico at about that time. (Rec., 12. 29, 30.) The clause is not preserved in Spanish on this record. But as translated into English by the official translator of the Supreme Court of Porto Rico, it reads as follows (Rec., 17):

> Second Clause. The said sale is effected in consideration of the sum of eighteen thousand *pesos*, commercial money, which shall be paid by the purchaser, Juan Serralles y Colon, who is obligated thereto by the party present, Eduardo Wellenkamp y Chelva, and will be received by the party present, Jose Nicolas de Cartegena, in the following instalments: Two thousand *pesos*, on the fifteenth day of July of the year 1898; two thousand *pesos*, on the same day and month of the year 1899; an equal sum of two thousand *pesos*, on the fifteenth of July of the year 1900; and three thousand *pesos*, on the fifteenth day of July of the years 1901 to the year 1904, both inclusive, *all of which to be paid in the money current in the commerce whatever may be the coinage of the*

> *money that as such is in circulation or is accepted in this province, at the rate of one hundred centavos (cents) of the money in circulation for each peso,* excluding all kinds of paper money in circulation or to be issued, even if its circulation should be compulsory.

The partition of the respective interests in the property of the father and his children necessitated a different arrangement, in the amended deed of October 6, 1894, with respect to the amounts of the several installments to be paid on account of the agreed purchase price. But the clause in the amended deed that was intended to regulate the kind of money in which the installments might be paid was substantially the same as the corresponding clause in the deed of September 1, 1894. The only difference between them on this record is that the official translator in the first deed, preserves in the English text the Spanish word "centavos" and endeavors to explain it by adding "(cents)" after it (*supra*), as if they were of equivalent meaning. In the translation of the second deed he omits the word "centavos" of the Spanish text and adopts the English word "cents" as a proper equivalent.

In the amended deed as thus translated the clause reads as follows (Rec., 24):

> all these payments shall be made in current commercial money, whatever the coinage may be of the money which, with such character, be in circulation, or accepted in this province, *at the rate of one hundred* CENTS *of the circulating medium for each peso.*

The controversy turns entirely upon this clause. Dona Belen Esbri, the appellee, upon finding it in the

mortgage conceived the thought that the indebtedness, originally incurred in Mexican *pesos* of the value in our American money of fifty-seven cents each, ought now to be paid in American gold dollars—a dollar for each *peso*. The American money was then in circulation. It was the current commercial money, and was not only generally accepted, but was the only money to be found in the island. What could be more simple, then, than to require the payment of the debt in American dollars! All that was necessary was to call the *centavo* a cent and the thing was done. By disregarding the question of relative values and translating the Spanish word "centavo" into the English word "cent" the clause in question would stand as an express agreement to pay the debt "*at the rate of one hundred* CENTS *of the circulating medium for each peso.*"

Such was the thrifty suggestion of Dona Belen Esbri. And the advantage to the creditors of this course of reasoning was manifest, for instead of the 18,000 Mexican *pesos,* worth about $10,260 in American money, the debtor would be required to pay 18,000 dollars in the new circulating medium. But her contention was not so remarkable as is the fact that both the trial court and the Supreme Court of the island upheld her in it and entered a judgment against the appellants which, if part of the debt had not already been paid before the American occupation of the island, would result in an addition of $7,740 to an indebtedness which when incurred amounted to only $10,260.

But before entering upon a discussion of the matter a brief statement of some further facts that appear on the record will serve to throw additional light upon the questions involved.

At the time of the execution of both deeds Mexican money was in circulation in Porto Rico. The unit was the silver *peso,* worth, as heretofore said, about fifty-seven cents in American money. (Rec., 12.) One hundred copper *centavos* made a *peso.* But the withdrawal of this money from the island had been officially announced by the Spanish government *more than a year prior to the date of the two deeds of purchase and mortgage* above referred to. Undoubtedly this official announcement of a change of money had been the occasion of the clause referred to in these deeds and of similar clauses inserted in many commercial and legal documents at about that time. (Rec., 29, 35.) During the year following the dates of the two deeds, the Spanish government, in accordance with its previous announcement, demonetized the Mexican silver, and by 1896 the exchange of that money for a special Spanish colonial money had been completed. This special money, which was in circulation in Porto Rico until withdrawn under the Foraker Act and replaced by American money, was of silver and the unit was also the *peso.* As was the case with the Mexican *peso* one hundred of the new special colonial copper *centavos* made a new *peso.* (Rec., 35, 36, 56.)

But the new *peso* was worth about 5 per cent. more than the old Mexican *peso.* Its value in American coin was sixty cents. And everything in the record seems to indicate that the transaction involved on this

record was brought to a conclusion with the understanding that it would be fulfilled in the new special colonial Spanish money (Rec., 10); and that the difference of 5% in the value of the two systems of money was taken into consideration in the price for which the property was sold.

But after a small part of the indebtedness had matured and had been paid in the new Spanish colonial money, the American troops occupied the island. It was no longer a "province" of Spain as stated in the mortgage deed. And when the new civil government was formed American money became a legal tender and the special Spanish colonial money was retired. It is a matter of current history that the exchange of moneys was completed within the three months fixed in the act, that is to say, by July 31, 1900. (Rec., 56.) The special Porto Rican coinage, in which the parties undoubtedly intended the payments to be made, had all been retired and could no longer be had. The coinage of the United States was the only medium left in which payment of the indebtedness might be made. The appellee demanded payment in this money at the rate of one dollar for each *peso*. The appellants claimed the right to pay each *peso* in American money at its equivalent value, that is, sixty American cents for each *peso* of the indebtedness. The appellant claimed this right under the Foraker Act.

The provision in the Act of April 12, 1900, for retiring the new colonial currency and substituting American money in its place is as follows (Section 11):

> "That for the purpose of retiring the Porto Rican coins now in circulation in Porto Rico and substituting therefor the coins of the United

States, the Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico known as the *peso* and all other silver and copper coins now in circulation in Porto Rico. * * * at the present established rate of sixty cents in the coins of the United States for one *peso* of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied. * * * and after three months after the date when this Act shall take effect no coins shall be a legal tender, in payment of debts thereafter contracted, for any amount in Porto Rico, except those of the United States. * * * *Provided, however,* that all debts owing on the date when this act shall take effect *shall be payable in the coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named.*"

On behalf of the appellant it is now contended, as it was below both in the trial court and the Supreme Court, that this provision of the Foraker Act gave to the appellants a right, denied to them by the judgments in the courts below, to pay the indebtedness in question in coins of the United States at the rate of sixty cents of our money for each *peso* of the original debt.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT ENTERED BELOW.

The claim of the complainant below was for 1165 *pesos*. Of this sum 1031 *pesos* and 66⅔ *centavos* were to be paid to her, as arranged under the terms of the second deed of sale and mortgage, out of the installment of 3,000 *pesos* due on July 15, 1902; and the balance of her claim amounting to 133 *pesos* and 33⅓ *centavos* was to be paid out of the installment of that amount due under the mortgage on July 15, 1903. (Rec., 3.)

By the terms of the deed interest on the whole indebtedness was payable quarterly. When the regular quarterly interest became due on September 15, 1900, after the Congress in the Foraker Act had fixed the value of the local coinage and had provided for its retirement on July 31, and had made American money a legal tender for all purposes, the appellants offered to pay the amount of the quarterly interest in American money at the rate of sixty cents for each *peso* due, this being the rate of exchange provided in the act. (Rec., 4.) The complainant below declined to accept payment at that rate and demanded an American dollar for each *peso*. This having been refused by the appellants, she brought this suit on April 17, 1901, to enforce payment in accordance with her demands. (Rec., 37-38.) Her bill of complaint or statement of her demand involves not only the interest due in September, 1900, but also the subsequent installments of interest that became due under the terms of the mort-

gage after that date. She also set up her right to be paid the principal as it matured at the rate of one American dollar for each *peso*. (Rec., 6.)

Her claim under the mortgage was the smallest claim for which suit could then have been brought. Any other claim sued on at that time would have involved a demand in excess of $5,000. Apparently therefore there was an effort by the holders of the mortgage indebtedness to test the question and establish the law governing the indebtedness in a way that might exclude this court from passing upon the case. But as heretofore stated, the result to the appellants of the action in the lower court, if it be left undisturbed, will involve a sum largely in excess of the amount required to give this court jurisdiction. The suit was instituted in April, 1901. It is evident therefore that neither of the two installments of 3,000 *pesos* each due on July 15, 1901, and July 15, 1902, has been paid. Nor has the installment of 133 *pesos* and 33⅓ *centavos* due July 13, 1903, been paid. It is equally evident that the appellants have not paid the 5,866 *pesos* and 66⅔ *centavos* due to the children of Cartegena in two installments on July 15, 1903, and July 15, 1904. (Rec., 24.) Here then are principal sums still unpaid aggregating 12,000 *pesos*. Interest at 10% on this sum would make a total of about 15,000 *pesos* unpaid at the time the suit was brought. So far then as the appellants are concerned, the result of the judgment entered below is to fix the law of the case and to require them to pay about $15,000 in American money instead of $9,000, which would be the extent of their indebtedness if the rate of exchange provided in the Foraker Act is to

control as here contended. The judgments entered below, in effect, require the appellants to pay the entire unpaid balance of the debt at the rate of one dollar for each *peso*. The trial court's finding is that the "heirs of said Serralles are bound to pay in dollars *all* the installments arising from said contract." (Rec., 37.) The judgment of the Supreme Court is that the appellants should pay the "installments that are due" and those "becoming due later on" with interest thereon, "at the rate of 100 *cents* of the American money, which is the current money, for each *peso.*" It adjudges this to be *"the law governing the contracting parties."* (Rec., 63, 64.)

From the standpoint, therefore, of the lower courts the judgments entered therein involve for these appellants an amount much in excess of $5,000. It fixes the law for the payment of the entire unpaid balance of the debt.

But this court has jurisdiction on another and a still stronger ground. As heretofore shown, the act of April 12, 1900, provides in Section 11 that all debts existing when the act took effect "shall be payable in the coins of Porto Rico now in circulation or in the coins of the United States at the rate of exchange above named," that is to say, at the rate of sixty cents in American money for each *peso*. The power of the congress to pass such an act cannot be doubted. For in addition to its general power to coin money and regulate the value thereof, and to borrow money and emit bills and thus to establish a system of currency and to make it a legal tender for private as

well as public debts, it has also the special power to regulate the value of foreign coin. The Porto Rican coinage in circulation in the island when the Foraker act took effect was foreign coin and congress was the only lawful authority that could regulate its value. And congress having regulated its value and established the rate of exchange and having provided that all debts should be payable in Porto Rican coin then in circulation or in the coin of the United States at the rate of sixty cents for each *peso*, it was contended below and is now contended here that the appellants had a right, the Porto Rican coin having been retired and not being in circulation, to pay the indebtedness in the coin of the United States at that rate of exchange. The pleading for the appellants expressly sets up the act of the congress and asserts their (Rec., 11) right under it to pay the indebtedness at the rate of exchange there established. The pleading for the appellee admits (Rec., 4) the willingness and offer of the appellants to pay the indebtedness at its equivalent value in American money as thus regulated. The right of the appellants under this act of congress to pay the indebtedness at the rate of exchange established by it was thus clearly asserted at the trial. But this right was denied, the trial court holding, one of its members dissenting (Rec., 31), that (Rec., 37):

> it is plain and evident that the heirs of said Serralles are bound to pay in *dollars* all the instalments arising from the said contract and the interest on the same, for dollars are the money current at present in this island.

And its judgment to that effect is formally pronounced in the following language (Rec., 37):

> We adjudge that, declaring this action to have

> been well taken, we should likewise declare, and do declare, that the heirs of Don Juan Serralles y Colon are bound to pay to Dona Belen Esbri y Roube[illegible], widow of Don Nicolas de Cartagena y Mangual, the interest due up to date, arising from the contract of sale made by Cartagena and Serralles, on the 6th of October, 1894, in American money, which is the money in circulation at present in the commerce of this island, and that in due time the interest becoming due, as well as the share in the instalments, belonging to her by virtue of the said contract, falling due in the years 1902 and 1903, and which were adjudged to her in the division of the estate left by her mentioned husband, Senor Cartagena, be paid in the money current in commerce, of whatever coinage the money may be, which, with such character, be circulating or accepted in this island, at the rate of one hundred *cents* of the current money for each *peso;* and we condemn the heirs of said Serralles to the payment of the interest on the interests due and unpaid, and to the payment of the costs. Thus, by this, our judgment, we pronounce, command and sign it.

An appeal having been taken to the Supreme Court of the island, the right of the appellants to pay the indebtedness in American coin at the rate of exchange established by law was still more clearly presented. It was contended (Rec., 38) that the judgment of the trial court violated the terms of Section 11 of the act of April 12, 1900. On the appeal papers of the Hon. Jose de Guzman Benitez, counsel for the appellants in the Supreme Court of the island, it is alleged that (Rec., 43):

> The said Section 11 provides in an absolute and positive manner that all debts pending when the said law goes into effect shall be payable in the money of Porto Rico at present in circulation or in the money of the United States at the rate of sixty

> cents of the United States currency for each *peso* of the Porto Rican currency. It is therefore evident that a violation of the said law has been committed in the judgment.

In his reply to the appeal papers the Hon. Herminio Diaz Navarro, counsel for the widow Esbri, refers to this provision of law as a "despotic ukase" and claims that it was not infringed by the judgment of the trial court. (Rec., 49.) The Supreme Court of Porto Rico disposes of the law by saying, the two American justices dissenting (Rec., 64), that it has no application to the case (Rec., 62); and its judgment is that (Rec., 63):

> there is nothing more logical or more proper in the fulfillment of the contract, than that the heirs of Serralles pay now the instalments that are due, to the legal representatives of the vendor, Jose Nicolas de Cartagena, at the rate of 100 cents of the American money, which is the current money, for each *peso* of the Mexican currency; and the instalments and revenues (interest) becoming due later on, in the money which may be circulating when they are due, in the same proportion as has been established, in the strict performance of the contract, which is the law governing the contracting parties.

It thus appears that Section 11 of the Act of April 12, 1900, was set up by the appellants in the courts below as the basis of the right claimed by them to pay the indebtedness in question in American money at the rate of exchange established therein. This right was denied by the lower courts. The record therefore presents a case in which this court may take jurisdiction on appeal. Section 35 of the same act provides:

> That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico

> • • • shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States, and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or *an Act of Congress is brought in question and the right claimed thereunder is denied.*

The matter is therefore properly before this court for review.

Crowley v. *United States*, 194 U. S., 461.
Rodriguez v. *United States*, 198 U. S., 156.

II.

THE COURTS BELOW HAVE DISREGARDED THE PLAIN INTENTION AND PURPOSE OF THE PARTIES TO THE CONTRACT.

The opinions and judicial acts of the Supreme Court of Porto Rico are entitled always to respectful consideration. Its members, both Porto Rican and American, are men of learning and of high character. But it is most difficult to understand their action in this case. The conclusion arrived at seems as whimsical as it is inequitable. And there is no train of thought or course of reasoning in their final judgment to indicate how the judicial mind reached so extraordinary a result. Without explanation of any kind the *centavo* is simply translated into a *cent*. All the world knows that it is not a *cent*. It has never been more than 6/10 of a *cent*. To call it a *cent* therefore is to add 66 2/3 per cent. to its value. To call it a *cent* in this case turns a debt of 18,000 *pesos* into one of 18,000

dollars. It increases the debt actually incurred by 66 2/3 per cent. This is done unaccompanied by any appeal to the reasoning faculties. No foundation is laid for it in logic or argument.

The agreement between the contracting parties was that the debt should be paid when it matured in money in circulation "*in this province,* at the rate of one hundred *centavos*" for each *peso.* There is no longer any "province." And so the court calls it an "island." (Rec., 37.) There are no longer any *centavos.* And the court therefore calls them *cents.* There are no longer any *pesos.* And so the court in its final order says (Rec., 37):

> "it is plain and evident that the heirs of said Serralles are bound to pay in *dollars* all the installments arising from said contract or the interest on the same, *for* DOLLARS *are the money current at present in this island.*"

Had the Spanish government afterward abolished the special colonial currency announced just before this contract was entered into and put into effect just afterward, and in its place had extended its own system of currency to Porto Rico, what would have been the result? The Spanish *peseta,* of the nominal value of twenty cents in American money but for many years worth only fifteen cents in actual exchange, is made up of one hundred *centesimos.* The same alchemy that can turn a *centavo* into a *cent* and a *peso* into a *dollar,* could with even greater facility turn a *centavo* into a *centesimo* and a *peso* into a *peseta.* This would change the debt of 18,000 *pesos* or $10,800, into one of 18,000 *pesetas* or $3,600 nominally, and 25 per cent. less at the present value of a *peseta* in the

money exchanges of the world. The judgment of the trial court would then have been that "it is plain and evident that the heirs of Serralles are bound to pay the debt in *pesetas,* for *pesetas* are the money current *at present* in this province." And the judgment of the Supreme Court of the island would be that there could be "nothing more logical or more proper in the fulfillment of the contract than that the heirs of Serralles should pay the debt at the rate of 100 *centesimos,* which is the money current, for each *peso.*" It is not to be forgotten also that there are one hundred *centimes* in the French *franc* and one hundred *pfennigs* in the German *mark,* a fact which suggests interesting possibilities of rapid changes in the amount of this indebtedness, should the future and the fortunes of war bring this island under the sovereignty of those nations.

Courts of justice throughout the world may differ in their notions as to what kind of evidence may or may not be admitted to explain and aid in the interpretation of a written contract. But all courts agree that when construing a written document the actual intention of the parties must control, whether it be ascertained from the document itself or is made clear by the aid of outside evidence. That certainly is the test that should be applied to the deed and mortgage of October 6, 1894.

The document itself when examined from that point of view appears to be an ordinary purchase and sale of real estate. It was clearly not intended to be a speculation in the fluctuations in value of the money that might be in circulation in Porto Rico.

The deed is subdivided into clauses. The first and second clauses embrace matters of inducement describing the parties and their capacities and the estate to be conveyed with a description of the improvements thereon. The third clause is entitled "Title." In it is set forth the ownership of the property by the grantors in their respective proportions. The fourth clause is entitled "Incumbrances." It sets forth that there are no incumbrances or liens of any kind upon the property. The fifth clause is entitled "Value." Here by mutual agreement of the parties the *value* of the undivided interest to be conveyed "has been fixed at the sum of eighteen thousand *pesos* current money," (Rec., 22) that is to say, in money then current. The provision of the sixth clause (Rec., 23) is that the property shall remain "mortgaged pending the payment of the total *value* of said sale." In the ninth clause are transcribed portions of the deed of September 1, 1894. The seventh clause of that deed thus transcribed is a declaration by the contracting parties that the price for which the sale is made is the "*just and true value* of the alienated interest in the plantation," and they "renounce all claim as regards the price," that is to say, they renounce all disputes and controversies as to its value. (Rec., 25.) The eighth clause thus transcribed throws a strong light upon the intention of the parties to the transaction. For here not only do the parties again declare the *value* of the interest conveyed to be eighteen thousand *pesos* of the money current at the time of the transaction, and renounce all right to any other valuation, and all right of action leading to a change of valuation on any ground (Rec., 26), but they agree, in accordance with the re-

quirement of Art. 27 of the mortgage law, that in case the property has to be judicially sold by reason of the failure of the debtors to pay the mortgage indebtedness, the "said price," that is to say, eighteen thousand *pesos* of the money current on the date of the transaction, shall be the basis of the judicial sale. In the translation of the first deed this eighth clause is as follows (Rec., 18):

> For the purpose of article 127 of the said mortgage law, the parties to the transaction declare the price of the share in the estate mortgaged, to be eighteen thousand *pesos, money current,* and they renounce and waive all claims to a new appraisement or action for the purpose, they being fully aware that that is the *value* that shall serve as basis in the public sale that shall be held if the obligation is not paid, and its payment be demanded judicially.

There is no reference here to the money current at the time the sale may take place. And if the property were now sold under judicial proceedings for that purpose there can be no doubt that the basis of the sale would be an amount in American money equivalent to the *value* of the property at the date of the deed. If the appellants were not able to respond to any personal judgment that finally may be rendered against them in this action, and the owners of the indebtedness should bring an action for the sale of the property itself, it is certain that they would have to account to the appellants for all moneys received from the sale over and above the equivalent *value* in American money of the 18,000 *pesos* of the indebtedness.

It thus appears that this transaction, like those of a similar nature that take place daily in any community,

was a purchase and sale and not a mere gambling transaction, such as it has been turned into by the decisions of the courts below. Sr. Serralles desired to buy this property and Sr. Cartagena to sell it. A price was agreed upon, and the transaction was concluded in good faith by both parties on the theory that the property had a certain *value,* and that upon the payment by Sr. Serralles of this *value* his obligations would be extinguished. They deliberately fixed the value and provided that in case of a judicial sale that value should be its basis. They expressly renounced the right by any proceeding to establish another and different value. Their intention and their good faith one to the other appear throughout the document. And this intention and good faith appear no less clearly in the clause (Rec., 46, 47) providing for payment in money in circulation "*in this province,* at the rate of one hundred *centavos* of the money in circulation, for each *peso.*" To get from this clause the theory that the payment was to fluctuate with possible changes of sovereignty, and that the indebtedness was to be largely decreased or increased as this nation or that took possession of the island, is to change the transaction into a mere gambling transaction of a most cumbersome and extraordinary kind. At that time there were no clouds upon the Spanish horizon and the war that occurred four years later and the resulting change in the status of the Spanish colonies were things that had not been thought of. This is shown by the use of the phrase "*in this province,*" from which the indisputable inference must be drawn that the parties to the contract had in mind only a change of currency by

the Spanish government and not by a foreign government occupying the island as the result of war.

The only outside evidence that was admitted to aid in the interpretation of the contract was that relating to a change in the currency. Both the lower courts find as a fact that shortly prior to the date of the transaction the Spanish Government had announced such a change. And it may be safely inferred from the finding of the court in this connection (Rec., 56) that the announcement also embraced a statement of the character and value of the new coinage. (Rec., 35.) It had been announced in the "Official Gazette" of Madrid, which was and still is the official source of information as to all matters of an administrative, legislative or judicial character. Prudence, therefore, suggested that a clause should be inserted in the deed providing for the payment of the several installments as well as the interest thereon in the new money. And similar clauses as heretofore shown, were commonly inserted in legal documents executed at that time in Porto Rico.

Like conditions would doubtless give occasion for the insertion of similar clauses in legal documents executed in this country. But it is a strange and curious method of judicial interpretation to pass beyond the immediate and natural cause for the insertion in the deed in question of such a clause, and give to it a universal application; to apply it under conditions that by no possibility could have been in the contemplation of the parties at the time. The dissenting judge in the trial court gives apt expression to this thought when he says (Rec., 32):

> If we * * * examine the literal meaning and the spirit of the contract, even then the plaintiff's claim appears to be unjustified. The literal meaning is not by itself sufficient to determine the intention of the parties, which must prevail over the letter of the contract; and said intention, never, and in no manner whatsoever, can have had relation to the present condition of things, which has come to all like a dream, even to those that were most awake.

Even if the clause in question be construed literally the judgments of the lower courts are clearly erroneous. For the application of the clause is limited to money in circulation *"in this province."* There being no longer any province the clause cannot be made literally effective. It also requires the payment to be made in *centavos.* The *centavo* having been withdrawn from circulation manifestly the payment cannot be made in that coin. The contract therefore cannot be carried out literally. It must therefore be enforced in accordance with the intention of the parties and in justice to both. As the transaction was a sale of property for an agreed *value,* every condition would be satisfied by the payment to the vendor of such *value.* This is the simple justice of the matter. To go beyond such an adjustment of the relations between the parties will work an extraordinary inequity to the vendee. And it cannot be done without a judicial announcement that a *centavo* is equivalent to a *cent,* a conclusion which cannot be supported from any point of view.

In this connection it may be interesting to examine very briefly those articles of the Spanish law that are referred to in the judgment of the Supreme Court of Porto Rico in connection with its interpretation of this

contract. They are all set forth here, from the War Department's translation of the Civil Code, in the order of the numbers of the several articles cited:

Art. 1091: Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations.

Art. 1115: If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

Art. 1255: The contracting parties may make the agreement and establish the clauses and conditions which they may deem advisable, provided they are not in contravention of law, morals, or public order.

Art. 1256: The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties.

Art. 1258: Contracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences which, according to their character, are in accordance with good faith, use, and law.

Art. 1281: If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its stipulations shall be observed.

If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

Art. 1283: However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract.

Art. 1284: If any stipulation of a contract

should admit of different meanings, it should be understood in the sense most suitable to give it effect.

Art. 1289: When it should be absolutely impossible to decide the doubts by the rules established in the preceding articles, if they deal with incidental circumstances of the contract, and said contract involves a good consideration, they shall be decided in favor of the smallest transmission of rights and interests. Should the contract involve a valuable consideration, the doubt shall be decided in favor of the greatest reciprocity of interests.

Should the doubts, the decision of which is referred to in this article, involve the principal object of the contract so that the intention or will of the contracting parties cannot be ascertained, the contract shall be void.

Art. 1445: By a contract of purchase and sale one of the contracting parties binds himself to deliver a specified thing and the other to pay a certain price therefor in money or in something representing the same.

Art. 1449: The determination of the price can never be left to the judgment of one of the contracting parties.

Art. 1500: The vendee is obliged to pay the price of the thing sold at the time and place stipulated in the contract.

If the time and place should not have been fixed, the payment must be made at the time and place where the thing sold is delivered.

These articles of the Spanish Civil Code then and now in force in Porto Rico, seem to afford an admirable guide for the construction of contracts. Running through them is the general principle that contracts are to be construed according to the intention of the contracting parties. Some of them seem to apply with great force to the question presented on this record. If the par-

ties contracted as the lower court thinks they did, it was a mere wager, contrary to good morals and public law and therefore in violation of Article 1255, as contended by appellants below. On the mere construction of the contract the second clause of Article 1281 would seem to be of controlling force. The same may be said even more strongly of Articles 1284 and 1289. And Article 1283 is certainly as applicable to this case as to the decision by the lower court hereinafter referred to.

All these articles were cited on behalf of appellants in the lower court. But that court apparently was of the opinion that there was no room for construction and it refused to apply these principles of law to the deed before them. The trial court regarded it as "plain and evident" and the Supreme Court as altogether "logical and proper" that this debt originally of 18,000 *pesos* should now be paid off with as many American gold dollars. For the American system of coinage had taken the place of the colonial coinage and has current in the island. The court indulges in no effort to demonstrate its conclusions. It simply regards it as clear, "there being no doubt as to the intention of the parties to the contract" (Rec., 63) that American dollars must now be paid for *pesos*.

As stated in the preceding pages many contracts entered into in Porto Rico at about that time embodied clauses substantially similar to the one here. This appears (Rec., 29) from the statements of certain prominent merchants who testified to that effect. Coupled with their testimony is the further statement that such contracts were universally satisfied among merchants

in the equivalent value of American money. The decision of the lower courts in this case, if not set aside, is likely however to produce a different attitude on the part of those to whom this decision will work an advantage in the fulfillment of contracts to which they are parties. The result is so immoral from the standpoint of fair dealing between men that the importance of the contention here made on behalf of the appellants cannot well be overestimated.

The only decision bearing upon this qustion that has come to the writer's attention is in a case decided, curiously enough, by the Supreme Court of Porto Rico. It is the case of *Cayo* v. *Balseiro y Georgetty.* It is available to the writer only through a reference to it contained in the dissenting opinion by Mr. Justice Sulzbacher in this case. (Rec., 65 at p. 70.) It there appears that the contract in question, which was dated about the time of the contract here involved, contained the following clause:

> And the balance of the price amounting to twenty thousand pesos current money at the time the same becomes due and payable shall be paid in gold or silver to the exclusion of all paper money.

As the case is stated by the dissenting justice, it appears that the creditor contended that all payments made after the date of the Foraker act should be made in American dollars instead of colonial *pesos.* The Supreme Court of Porto Rico held otherwise, and the chief justice is quoted as making the following observations in the case (Rec., 71), which apparently have lost something of clearness in the translation:

> The change of money having been established without considering the difference which could re-

sult in the relative value between the one and the other, the stipulation between the parties only referred to a special and particular case,* and could have no application to an incident entirely different and to one which the parties could not foresee; for such would be beyond the limits of human prevision.

For this reason such events could not enter into the calculations and deliberations of the contracting parties that a change of money would be established five years thereafter by the American Government in consequence of the change of sovereignty which happened in this island; because once provincial money was substituted for Mexican money, that thereafter the currency of the United States of America, with a discount of forty per cent. of its value, should take its place. Hence on account of this extraordinary and unexpected event, Article 1283 of the Civil Code is applicable which says: "However general the terms of the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract."

Here it appears that the court gave application to Article 1283 of the Civil Code (*supra*). And it is difficult to see how the same court could have rejected that article as a sufficient basis for the contention made before it by the appellants in this case.

In his dissenting opinion in the Supreme Court of Porto Rico (Rec., 65) Justice Sulzbacher seems to regard one phase of the judgment of the majority in his court as being, in effect, a dismissal of the appeal from the trial court, because of some alleged insufficiency or

*The chief justice, as appears from the judgment in this case where he mentions the case cited (Rec., 63) here refers to the change from Mexican to the new colonial currency that had been announced by the Spanish government.

lack of clearness on the appeal papers. And he makes note of the fact that notwithstanding the dismissal, as he regards it, the judgment of the majority goes on to dispose of the case upon its merits. He examines the point at some length and in an interesting discussion of the question, contends that with the new order of things in Porto Rico, the Supreme Court of the island ceased to be a court of cassation and became a court of appeal like American appellate tribunals.

It does not seem necessary to go into that question here. The majority in the lower court apparently did not regard their action on the point in question as a dismissal of the appeal. Their ruling is (Rec., 61) only that "it is not proper to admit the appeal *in so far as* it is based on Subdivision 7 of Article 1690." They then go on and discuss and decide the case on its merits. They regarded the case as being fully before them and they fully passed upon the main question in it and thus fixed the law for the payment of the whole indebtedness, including the portion not actually embraced on the face of the pleadings. It is assumed therefore that the merits of the case having been fully gone into in the court below, the case is now open to be fully reviewed here.

The judgment of the lower court should be reversed.

Respectfully submitted.

JAMES S. HARLAN,
Attorney for Appellants.

Supreme Court of the United States.

No. 65.—October Term, 1905.

The Succession of Juan Serralles, by their Attorney in fact, Eduardo Wellenkamp, Appellants,
vs.
Belen Esbri, Widow of Cartagena.

Appeal from the Supreme Court of Porto Rico.

[January 2, 1906.]

The appellee, plaintiff below, commenced this action, called a "declaratory action of greater import," (Law of Civil Procedure, Porto Rico, Arts. 480, 481, 482,) to obtain payment of certain sums due on an indebtedness of the defendant (appellant), secured by mortgage, as stated in that instrument. She obtained judgment in her favor in the proper District Court of Porto Rico, which was affirmed by the Supreme Court of the island, and the defendant has appealed from that judgment to this court. The sole question is whether the debt may be solved in American money at the rate of sixty cents thereof for each peso of indebtedness, or must one dollar in American money be paid for each peso.

The following are the facts: One Nicholas Cartagena y Mangual desired to sell the fractional part, owned by him, of a sugar plantation, known as "Ursula," situated in the municipal district of Juana Diaz, in the province of Porto Rico, such fractional part being eighteen per cent of the value of the whole plantation, valued at 80,000 pesos. The purchaser, Juan Serralles, agreed to pay for such share 18,000 pesos. Accordingly a deed of purchase and mortgage was made between the parties on the first day of September, 1894. That instrument contained the statement that the sale was effected "in consideration of the sum of 18,000 pesos, commercial money," which shall be paid by the purchaser in instalments, viz., "two thousand pesos on the fifteenth day of July, of the year 1898; two thousand pesos on the same day and month of the year 1899; an equal sum of two thousand pesos on the fifteenth day of July, 1900, and three thousand pesos on the fifteenth day of July, of the years 1901 to the year 1904, both inclusive, all of which to be paid in the money current in the commerce, whatever may be the coinage of the money that as such is in circulation or is accepted in this province, at the rate of one hundred centavos (cents) of the money in circulation for each peso, excluding all kinds of paper money in circulation or to be issued, even if its circulation should be compulsory."

The instalments were to bear interest at the rate of ten per cent per annum from the date of the deed, which interest was due and payable quarterly. The parties also declared "that the price for which said sale is made is the just and true value at present of the share and interest hereby sold and conveyed," they being "fully aware that that is the value that shall serve as a basis in the public sale that shall be held if the obligation is not paid, and its payment should be demanded judicially."

A few days after the execution and delivery of this instrument it was discovered that Cartagena was not the owner of all of the one-eighteenth part of the plantation, because that interest was acquired during his marriage with his first wife, and was what is termed "conjugal partnership property," acquired for a valuable consideration during her life. When she died her interest went to her children, and so the seller, Cartagena, owned the above-mentioned fractional part of the plantation, with those children. It therefore became necessary to make another deed and mortgage, conveying the interest of all the owners of the fractional part of the plantation, including such children. This was accordingly done, and on the 6th of October, 1894, another instrument, in the nature of a deed and mortgage, was executed by the proper parties, in ratification and extension of the first instrument, and which contains substantially the same provisions as the first instrument, and the payments were to be made to the parties conveying the premises in the proportion in which they were interested in that property. These 18,000 pesos were to be paid by the purchaser, at the same times mentioned in the former instrument, "in current commercial money, whatever the coinage may be of money which, with such character, be in circulation or accepted in this province, at the rate of one hundred cents of the circulating medium for each peso, and to the exclusion of all paper money created or to be created, even though its circulation be compulsory."

On the 15th of September, 1900, a quarterly payment of interest became due under the terms of the mortgage, and the appellant proposed to pay it in American money then current, at an amount equivalent in value to the former provincial money, which was not then in circulation. This offer was refused. The appellee then commenced an action in a Municipal Court, to recover the interest due September 15, 1900, in American money, at the rate of one dollar for each peso that was due. She obtained what is termed an "executory judgment" for such payment, and that judgment (of the Municipal Court) was affirmed by the District Court, and the appellant then paid the same. Upon quarterly instalments of interest due December 15, 1900, and March 15, 1901, the appellant made the same offer to pay in American money of equivalent value of the provincial money or peso, which was not then in circulation, and the offer was again refused, and this declaratory action of greater import was then

commenced, to recover one American dollar for each peso of indebtedness due up to the date of the commencement of suit, and to obtain a declaration that the future payments should be made in the same manner. Before the commencement of this action, in 1901, the province had been ceded to the United States, which (prior to the cession) had occupied it by its troops in 1898. On the 12th day of April, 1900, Congress passed an act, (31 Stat. 77, 80,) section eleven of which (reproduced in the margin)* provided for retiring the Porto Rican coins and substituting American money therefor.

In the pleading on the part of the plaintiff below the foregoing facts were averred, but no averment or contention was made that the so-called "executory judgment" which plaintiff had theretofore obtained constituted *res adjudicata* as to the question now in issue.

The defendant (appellant herein) put in an answer, setting up various facts unnecessary to be here adverted to.

He also averred that under section eleven of the act of Congress, above mentioned, he had the right to pay the instalments due on the mortgage, in American money at the established rate of sixty cents in the coin of the United States for one peso of Porto Rican coin.

The trial court, in its judgment, after reciting the existence of the executory judgment in the action above described and also all the proceedings in the case before it, decreed the payment of the interest or instalments which might then be due, or thereafter to grow due, to the plaintiff, in

*"SEC. 11. That for the purpose of retiring the Porto Rican coins now in circulation in Porto Rico, and substituting therefor the coins of the United States, the Secretary of the Treasury is hereby authorized to redeem, on presentation in Porto Rico, all the silver coins of Porto Rico known as the peso, and all other silver and copper Porto Rican coins now in circulation in Porto Rico, not including any such coins that may be imported into Porto Rico after the first day of February, nineteen hundred, at the present established rates of sixty cents in the coins of the United States for one peso of Porto Rican coin, and for all minor or subsidiary coins that same rate of exchange shall be applied. The Porto Rican coins so purchased or redeemed shall be recoined at the expense of the United States, under the direction of the Secretary of the Treasury, into such coins of the United States now authorized by law as he may direct, and from and after three months after the date when this act shall take effect no coins shall be a legal tender, in payment of debts thereafter contracted, for any amount in Porto Rico, except those of the United States; and whatever sum may be required to carry out the provisions hereof, and to pay all expenses that may be incurred in connection therewith, is hereby appropriated, and the Secretary of the Treasury is hereby authorized to establish such regulations and employ such agencies as may be necessary to accomplish the purposes hereof: Provided, however, That all debts owing on the date when this act shall take effect shall be payable in the coins of Porto Rico now in circulation, or in the coins of the United States at the rate of exchange above named."

United States coin at the rate of one dollar thereof for each peso of indebtedness. Basing its decree wholly upon the literal language of the contract, the court said: "It appears that Don Juan Serralles y Colon bound himself to make the payments to said Cartagena, by virtue of the said contract of sale, in money current in commerce, of whatever coinage it may be, at the rate of one hundred cents of the current money for each peso, it is plain and evident that the heirs of said Serralles are bound to pay in dollars all the instalments arising from the same contract, or the interest on the same, for dollars are the money current at present in this island."

An appeal was taken by the defendant to the Supreme Court on the ground, among others, that the judgment of the District Court violated Articles 1281 and 1283 of the Civil Code. The articles are as follows:

"ART. 1281. If the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of the stipulations shall be observed.

"If the words should appear contrary to the evident intention of the contracting parties, the intention shall prevail.

"ART. 1283. However general the terms of a contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract."

Further ground of appeal was the alleged violation of the eleventh section of the act of Congress above mentioned, under which appellant claimed the right to pay in United States coin at the equivalent value of sixty cents for each peso.

The Supreme Court, in due time, after argument, affirmed the judgment of the court below on the law, holding that the contract was clear, and its literal terms must be complied with. It did not, nor did the District Court, hold the prior judgment to be *res adjudicata.*

The court also denied the right claimed by the defendant, under the above-mentioned act of Congress, to pay his indebtedness at the rate of sixty cents of American money for each peso of such indebtedness, on the ground that the act did not apply to such cases as the one before the court.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The question arises herein whether this court has jurisdiction to hear the case, upon appeal or otherwise. The action is one to recover the interest due, on an indebtedness from the appellant to the appellee, on account of the purchase by the former of a certain interest in a plantation in Porto Rico, owned by the testator of appellee, which indebtedness was secured by a mortgage. This action is in its nature something like one to

foreclose a mortgage. The question arising in the case is in regard to the kind of money in which the indebtedness of appellant (both that due at the time of the commencement of the action and that accruing thereafter) should be paid, the appellee asserting her right to be paid in American money at the rate of one dollar for each peso of indebtedness, while the appellant, on the contrary, asserts his right, under section eleven of the act of Congress of April 12, 1900, already mentioned, to pay the indebtedness in money or coins of the United States, at the rate of sixty cents in such coins for each peso of his indebtedness. This right was denied by the court below on the ground that there was a clear contract to pay as demanded by the appellee, and that the act of Congress had no application to the case. Judgment was accordingly given in favor of the appellee, that the appellant should pay to the appellee the indebtedness due or thereafter to grow due to her, at the rate of one dollar in American money for each peso of his indebtedness. Appellant thus claimed a right under a statute of the United States, which was denied, and under section thirty-five of the Foraker Act, (April 12, 1900,) this court has jurisdiction to review the judgment (*Crowley* v. *United States*, 194 U. S. 461; *Rodriguez* v. *United States*, 198 Id. 156.)

The record also shows that a prior action had been commenced by appellee, in a municipal court of Porto Rico, between the same parties, to recover an instalment of interest due September 15, 1900, and that the same defense was there made in regard to the character of the money in which the debt should be paid. The Municipal Court in that case decided in favor of the appellee herein, and judgment to that effect having been duly entered, an appeal therefrom was taken to the District Court, which affirmed the judgment, and the same was thereupon paid by the appellant herein. That judgment is not set up by the appellee as *res adjudicata*, and while it is recited in the judgments in this case both in the District and Supreme Courts as having been recovered, it is not held to be such by either of the courts, but in such judgments it is referred to as an "executory judgment," and by Article 1477 of the Porto Rico "Law of Civil Procedure" (page 299) it is provided that "Judgments rendered in executory actions shall not give rise to the exception of *res judicata*, the parties reserving their rights to institute the ordinary action on the same question." As the courts below have treated and denominated the prior judgment in the Municipal Court as an "executory judgment," obtained in an executory action, the reason for not holding the judgment to be *res adjudicata* becomes apparent when the above article of the code is considered.

We come, then, to a consideration of the proper construction of the provisions in the two deeds, regarding the kind of money in which the debt is to be paid. They are set forth in the foregoing statement and are sub-

stantially alike, excepting that the first deed, that of September, 1894, in speaking of the coinage, says, that the payment is to be made in money that is in circulation or is accepted in the province, at the rate of one hundred *centavos* (cents) of the money in circulation for each peso, and in the amended deed of October 6, 1894, the translator of the original Spanish leaves out the word "centavos," and gives what he regards as its proper translation, the word "cents," so that the provision reads that the money is to be paid at the rate of one hundred "cents" of the circulating medium for each peso. These two deeds represented the same transaction and were drawn, of course, in the Spanish language. In the first deed the interest of the children of Cartagena was not referred to, because of the mistaken assumption that Cartagena had the whole title, and upon discovering the mistake the second deed was made, conveying his interest and the interest of his children, amounting to one-eighteenth of the whole value of the plantation, as conveyed by that deed to the same purchaser. The later deed was regarded by all parties as a mere rectification and ratification of the first deed, and it is quite clear that the word "centavos," contained in the first deed, was used in both, and that the word "cents" is but a translation of the original Spanish word "centavos," which was used in this contract drawn in the Spanish language.

This is in truth assumed to be correct by counsel in the court below, in his communication to that court in behalf of the present appellee, (which forms part of the record herein,) as he there uses the word "cents," and then follows it by the use of the word "centavos."

It may be, therefore, stated as a fact that the original contract in the deeds provided for the payment in money current in the province at the rate of one hundred centavos for each peso. There is no finding in so many words, as to the value of the peso mentioned in the contract. The Spanish word centavo is said to be, in Spanish and in South American countries, a small copper or nickel coin, in value six-tenths of a cent (actual), and one cent (nominal); the one-hundredth of a peso. See Standard Dictionary of the English language. The centavo being worth really six-tenths of a cent, and being the one-hnndredth part of a peso, would, of course, make the peso worth sixty cents in American money.

The eleventh section of the act of Congress, already mentioned, provides for the redemption of all silver coins of Porto Rico known as the peso, and all other copper and Porto Rican coins in circulation in Porto Rico "at the present established rate of sixty cents in the coins of the United States for one peso of Porto Rican coin, and for all minor or subsidiary coins the same rate of exchange shall be applied." The Congress thus fixed the rate of exchange in the redemption of these coins, and it must be assumed to have been fixed at the value of the peso in American coin.

From these facts it appears to us that there is no rational doubt that at the time when this contract was executed the peso in circulation in Porto Rico was worth not to exceed sixty cents, American money. At the time when the money was due under the contract, in September, 1900, it is admitted that all the pesos and centavos theretofore in circulation had been at that time redeemed by the United States, pursuant to the provisions of the act of Congress, and the money in circulation in Porto Rico was then and thereafter the money of the United States. This was the money current in commerce in Porto Rico and was in circulation and accepted therein as such money. It is now claimed by the appellee that, as the American money was the money of commerce and was alone in circulation, she was entitled in September, 1900, under the provisions of the contract, to be paid one hundred cents, or, in other words, one dollar of that money for every peso of indebtedness owed by the appellant, either then due or thereafter to grow due. By calling the centavo a cent in American money, while worth but six-tenths of a cent, the claim is made that the contract really provided for the payment of one hundred cents of American money for every peso of indebtedness. In other words a centavo is made a cent, and it is said the appellant promised to pay one hundred cents per peso. This construction of the contract has been upheld by the courts below, because, as it is said, the strict and plain letter of the contract calls for it, and the result is that the appellant is adjudged to pay over sixty per cent more than the value of the interest he purchased, and that much more than the value of the peso, and also that much more than the real amount of his debt. While it is true that the silver coinage of Porto Rico, known as the peso, and all other silver and copper coins which were in circulation on April 12, 1900, had been retired before September, 1900, and that the money then current in commerce in Porto Rico was American money, we do not, on that account, think that the appellee had the right to claim payment of one dollar in American money for each peso of indebtedness. The centavo is not a cent. It is equal to but six-tenths of a cent, and the parties contracted, the one to pay and the other to receive, one hundred centavos to the peso, not one hundred cents to the peso. Although the translator seems to have assumed that the word "cents" was the correct and accurate translation of the word "centavos," it must be remembered that the contract was in fact to pay centavos, and that the centavos were in fact, as we think is plainly shown in this record, worth only about six-tenths of a cent, and that while one hundred centavos were worth one peso, one hundred American cents were worth one dollar, or above sixty per cent more than the same number of centavos. It is entirely incredible that either party ever meant any such result as is now contended for by the appellee. Even if it were conceded that the literal and strict construction of the

contract is as decided by the courts below, yet we are clear that such literal and strict construction does not express the real intention of the parties when the contract was made.

Articles 1281 and 1283 of the Civil Code of Porto Rico, set forth in the foregoing statement, show the law to be in Porto Rico substantially the same as it is here, that is, that where it is plain that a strict and literal construction of the contract does not convey the real meaning of the parties, such construction is not to be entertained. See cases cited in *United States* v. *Utah etc. Stage Co.*, (199 U. S. .) In that case the strict and literal construction of the contract was contended, by the officers of the Government, to be its proper construction, and hence, it was argued, when the contractor might, under the provisions of his contract, be required to perform new or additional mail, messenger or transfer service, under the authority of the Postmaster General, without additional compensation, that then such official could require such additional service as arose by reason of the establishment of what amounted to a new station, which additional service required, above the normal increase of service, an additional distance to be traveled in wagons of over 300,000 miles. This court held that the parties never meant any such thing, and the judgment of the Court of Claims for the recovery of compensation for the extra distance traveled was affirmed.

On looking at this contract we are of opinion that it evidently contemplates only such change in coins as might occur while Porto Rico was under the same political power. It speaks of the payment of the debt in the money current in commerce, whatever may be the coinage of the money that as such, is in circulation "in this province." The words "in this province" evidently did not contemplate any change of government, but only a possible change of coinage under the same government. It may be assumed that in 1894 no one could have contracted with reference to a war between Spain and the United States, which did not break out until four years thereafter, nor would any one have contemplated the cession of Porto Rico to the United States, and the entire substitution of American money for that which had theretofore circulated in Porto Rico, and the retirement of all the other money.

The value of the interest sold in the plantation was agreed by both parties, at the time of the execution of the instrument of deed and mortgage, to be 18,000 pesos, and so it was plainly stated in that instrument. The transaction was a *bona fide* one, providing for actual conveyance of the interest in the plantation, and there was plainly no gambling in the possible changes in the value of the coin, which might take place under a foreign goverment, when the various payments were to be made. The parties evidently had no thought of the war, or of being transferred to a foreign government as a result thereof. Under the circumstances it is

impossible to conceive of sane persons agreeing in this case upon the value of the interest purchased and sold, and then that the purchaser should further agree to pay over sixty per cent more than the value of the thing purchased if it should so happen in the future that different coinage might be in circulation, under a different sovereignty, which would effect that result.

The question may be asked, what did the parties mean by this use of language, if they did not mean precisely what the courts below have said they did, and where is the justification for changing the interpretation as gathered from their language? It may not, perhaps, always be clear to see and determine what parties did mean by the language they used in a contract, and at the same time it may be perfectly clear they did not mean to contract with reference to what the courts below have called the literal and specific import of the language actually used. In this case we have no such difficulty. We have just stated what, in our opinion, the meaning really was, and that it was aimed at the possible change in coinage or of the value of the new coin under the decree of the government of Spain itself. Why that contingency should have presented itself is not stated clearly as a fact in either of the judgments of the courts below. (It may be here remarked that the judgments of those courts also partake of the nature of findings of fact and opinions of the court thereon.) There is a recital in the judgment or decree of the Supreme Court of what was stated by counsel for appellant in his written communication to the court, and which is part of the record, and that statement was, in substance, that the change was contemplated by the Spanish goverment at that time (1894), by which the peso then in circulation was to be retired, and another coin was to be issued which would be worth sixty instead of fifty-seven cents to the peso, and it was with that contingency in mind that the parties provided as they did in the contract in question. It is true the Supreme Court does not find the fact of the existence of this intention on the part of the Spanish government, but, in giving a statemeut of what it regarded as the distinction between the case at bar and one theretofore decided by the same court, in a manner seemingly inconsistent with this decision here, the Supreme Court said:

"This case being different from what occurred in the case of Dona Josefa Cayol y Julia, and the agricultural corporation 'Balseiro and Gergetti,' which case was recently decided by this Supreme Court, and in which neither of the parties had expressed their will in so clear and explicit a manner as in the present case, nor could the case offer any difficulty, since the plaintiff herself had recognized in her complaint—and it was also proven in the course of the suit—that the clause of the deed, the application of which was being considered, and on which she based her claim that the purchasers Balseiro and Georgetti should pay her the interest on that part of the price, the payment of which had been postponed, in American currency without the discount fixed by the government of the United States for the money of this country, had been established by

the parties in consideration of the exchange of the Mexican money, which had already been announced by the Spanish government on that date when the contract was made, for which reason this Supreme Court had to dismiss the appeal in cassation interposed by the plaintiff Dona Josefa Cayél, from the judgment rendered by the District Court of Arecibo, denying the claim made by the said Dona Josefa Cayol, the court basing its decision precisely on this same Article 1283 of the Civil Code, the application of which is the question at issue in the present appeal."

True it appears to have been proved in that case, what the record does not show to have been specifically proved here, that there was at the time this contract was entered into a contemplated exchange of money to be circulated, and the contemplated change had been announced by the Spanish government at the time when the contract was made. But this fact is not a necessity, in order to maintain our view of the proper construction of the contract, for it simply furnishes what may be termed a presumption that the use of the language as to the payments was made with reference to this particular and contemplated exchange. The wholly incredible nature of the contract, if construed in the way the lower courts have done, is none the less apparent, and we cannot agree with a construction which binds the appellant to pay more than sixty per cent than the parties agreed the interest in the plantation was worth, and just that amount more than both parties supposed was to be paid.

In truth, a careful reading of the whole decree of the Supreme Court (while also considering that the recitals in that decree of matters contained in the appellant's brief were not negatived by the court as to matters of fact, the case being decided wholly upon the asserted strict construction of the contract) rather leads one to the conclusion that the court assumed the truth of those recitals as to the contemplated change of coinage, but regarded the fact as immaterial in view of what it thought to be the plain language of the contract. Of course we do not intimate that the court below was bound to deny the truth of the recitals or else it was to be taken as admitting it. We only refer to it in passing, in connection with the language of the whole decree, and the reasons given for the judgment, as some ground for the belief that the court in fact assumed the truth of the recitals, but thought them wholly immaterial. The court also pays no heed to the evidence which was received upon the trial of the case, showing the manner in which settlements of existing debts had been made upon instruments like the one in question, with or without the particular clause as to payments, the evidence being that the debts were paid at the rate of exchange provided for in the act of Congress. This, of course, must have been upon the ground that the words of the contract, as construed by the court, governed.

In the *City of San Juan* v. *St. John's Gas Co.*, (195 U. S. 510,) the contention was that the money due the gas company for lighting the street

lamps was payable in Porto Rican money, but this court said that the contract was for payment in current foreign money, exclusive of Spanish gold; and it was conceded that if foreign current money was required by the contract, money of the United States, current at the time the contract was made, was within the contemplation of the parties. Such money was also current in the island when performance was due. The case does not cover the one at bar.

Nor is the debt payable at the rate of one hundred cents for each peso, on the theory that the money in circulation at the time and place for the performance of the contract was the money in contemplation of the parties thereto in the absence of a contract for the payment in some other money. See 195 U. S. 510, cases cited, page 520.

There was, as we have seen, no contract to pay in American money at the rate contended for by appellee. In providing for the withdrawal of all coins in circulation in Porto Rico, Congress provided at the same time for fixing the equivalent between those coins and American coins for the payment of all existing debts. This was simply fixing the value of those coins relatively to their value in American coin and with reference to the payment of debts then existing. All money then unpaid on this mortgage obligation was an existing debt within the act, and hence might be paid in American money at the rate of exchange therein specified. The withdrawal of the coins of Porto Rico in circulation at the time of the passage of the act of Congress, and provided for therein, did not take legal effect, so far as concerned debts then existing, except upon the condition that those debts might be solved in the coins of the United States, at the rate of exchange stated in the act. This did not impair or change the obligation of any contract, and was but an exercise of power to fix the value of the coins which were to be withdrawn, and to state the rate of exchange at which existing debts might be paid in American money, and as there was no contract to pay at any other rate, the act was valid and applied to this case.

We are of opinion that the appellant is entitled to pay the balance remaining unpaid of the debt secured by the mortgage in American money, at the rate of exchange prescribed by Congress.

The judgment of the court below is reversed and the case remanded for further proceedings in conformity with this opinion.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.